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LETTER DATED 9 JUNE 1992 FROM THE CHARGE D'AFFAIRES A.I.
OF THE PERMANENT MISSION OF KUWAIT TO THE UNITED NATIONS
ADDRESSED TO THE SECRETARY-GENERAL

I have the pleasure to transmit to you herewith the text of a letter dated 9 June 1992 addressed to you by the Deputy Prime Minister and Minister for Foreign Affairs of the State of Kuwait, Sheikh Salem Sabah al-Salem al-Sabah, in which he responds to the Iraqi allegations contained in document S/24044 of 1 June 1992.

I should be grateful if you would have the text of this letter and its annex circulated as a document of the Security Council.

(Signed) Mohammad Saad AL SALLAL
Chargé d'affaires a.i.

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Annex

Letter dated 9 June 1992 from the Deputy Prime Minister and Minister for Foreign Affairs of the State of Kuwait addressed to the Secretary-General

Kuwait has taken note of the letter dated 21 May 1992 addressed to you by the Minister for Foreign Affairs of Iraq concerning the decisions of the Iraq-Kuwait Boundary Demarcation Commission appointed by the Security Council.

The majority of countries in the world were surprised by that letter and by its contents. Kuwait, however, was not surprised, since the contents of the letter are in the long tradition of the practices of the Iraqi regime, which consists in challenging international legitimacy, persisting in its aggressive intentions, proclaiming its refusal and rejecting all agreements and conventions ratified by Iraq.

The letter from Iraq can be summed up in one sentence: Iraq refuses to recognize the catastrophe with all its consequences and all the misery which it has caused and the tragedy and damage which it has inflicted on Kuwait, on Iraq, on the Arab nation and on the whole world.

After the crime of the invasion, the adventure of the war, the crushing defeat, the sacrifices and loss of human life and the hostility of the whole world, Iraq brings us back to the starting-point. In its letter, it closes its eyes and stops its ears to the reality which has been recognized by all the States of the world and all international institutions and which it has endeavoured to disregard by resorting to invasion, violence and the law of the jungle and by trying to impose its point of view by force of arms.

This reality is based on the fact that Kuwait is an independent sovereign State, a Member of the United Nations and a member of the League of Arab States and of other international, regional and Arab organizations, that it has its own historical and legal existence, that it does not depend on any State or part of a State, and that it has diplomatic representation to various States throughout the world, including Iraq.

Kuwait's boundaries are described in the agreements which Iraq signed and recognized and which it deposited with the League of Nations with a view to confirming that those bundaries were settled and agreed. That was, moreover, a precondition for its membership in that organization, which refused to admit to membership States which disputed their boundaries with their neighbours. The course of the boundary was reaffirmed in the Agreed Minutes signed in 1963 by the two parties, Kuwait and Iraq. In that text it is stated that Iraq recognizes the independence and boundaries of Kuwait. This instrument was deposited with the United Nations, and Iraq accepted it once again in a letter dated 11 April 1991 (S/22480) in which the Iraqi National Assembly announced that it accepted Security Council resolution 687 (1991).

The boundaries between Kuwait and Iraq are delimited precisely. The problem arises from the fact that Iraq has constantly delayed the demarcation of the boundary and the installation of frontier posts, indulging in provocatory and aggressive manoeuvres and thereby going back on its promises.

Iraq has taken no account of the agreements reached and of this reality and has committed a treacherous act of aggression against Kuwait, its peaceful neighbour. It has invoked pretexts which the world deems futile and grasped at illusions, challenging the international community and rejecting the appeals to withdraw and to respect international legitimacy. This refusal has cost Iraq a crushing defeat and enormous losses in terms of property and human life and forced it to accept unconditionally the Security Council resolutions which have restored legitimacy and reminded Iraq of its obligation to respect the instruments which it signed on 4 October 1963 when it freely and of its own will recognized Kuwait, its independence and its boundaries as specified in the instrument deposited with the United Nations as Treaty No. 7063. What is more, Iraq has accepted all the Security Council resolutions and the Iraqi National Assembly has ratified them, a step which the world had hoped would mark the end of the tragedy and the beginning of a new era of peace and cooperation in the region.

The letter from the Minister for Foreign Affairs of Iraq, which would appear to express Iraq's objection to the decisions of the Boundary Demarcation Commission, in reality, in the light of both the wording and the content, constitutes a further blatant proclamation of Iraq's refusal to accept international legitimacy and decisions and its rejection of all previous agreements, as well as the reaffirmation of the claims which served as a pretext for the invasion. In this letter, Iraq repeats and implicitly reiterates its threats when it states that the decision of the Boundary Demarcation Commission is a time bomb which may explode at any moment.

Although the letter from Iraq is nothing but a repetition of claims which consist in denying facts which are as clear as daylight, we will endeavour below to deal, in all objectivity and simplicity, with some of the points which the Minister for Foreign Affairs of Iraq touched upon in his letter in order to show that Kuwait is constantly guided by reason and justice, that it can draw a lesson from the catastrophe and from the past in order to turn a new page and restore peace and security in the world and unity of direction to the region and that it rejects any claim to domination and aggression in a world which can find salvation only through fraternity, cooperation and joint action in mutual respect and in relations governed by legitimacy and principles.

I. In his letter, the Minister for Foreign Affairs of Iraq starts by stating that the fact that, in delimiting the boundary between Iraq and Kuwait, the Boundary Demarcation Commission established by the Security Council had to take as a basis the agreement signed between the two countries on 4 October 1963 prejudged the demarcation of the boundary with Kuwait instead of leaving the two countries to settle their differences through negotiations. In so doing, he ignores the long history of persistent attempts

and efforts by Kuwait, using all means, to persuade Iraq to delimit the boundary (attempts which were met with repeated delays, provocations and acts of aggression at the frontier until the very day before Iraq's treacherous act of aggression). In order to settle this dispute, Kuwait had proposed recourse to arbitration by a neutral commission of the League of Arab States. Iraq reacted the following day by its infamous invasion.

Has Iraq forgotten that it was its treacherous act of aggression and its disregard of international legitimacy which placed this problem outside the regional context, thus moving its obligation to respect such legitimacy to an international context? Iraq having rejected all acceptable means of resolving the boundary dispute thus created, it was essential that the United Nations should intervene and take charge.

Iraq proclaimed its opposition at the time of the adoption of Security Council resolution 687 (1991) by pointing out that questions relating to boundaries between States, including their delimitation and demarcation, were not within the competence of the Security Council. In view of the invasion of Kuwait by Iraq and the effects of that invasion on the security and stability of the region - questions which are within the competence of the Security Council, which is responsible for monitoring and eliminating hotbeds of tension in the world and for taking the necessary measures to avert them - the Council, which, in paragraph 4 of resolution 687 (1991), had decided to guarantee the inviolability of the international boundary between Kuwait and Iraq, nevertheless felt that it should intervene to delimit the boundary in order to settle the problem once and for all.

Iraq accepted Security Council resolution 687 (1991), which was ratified by its legislative and executive authorities, as evidenced in United Nations documents. By rejecting the foundation which served as a basis for the work of the Boundary Demarcation Commission, Iraq has gone back on its unconditional acceptance of the aforementioned Security Council resolution.

It should be pointed out that resolution 687 (1991), which, inter alia, provided for the establishment of the Boundary Demarcation Commission, has priority over all other relevant resolutions since in paragraph 1 it confirms the provisions of all other previous resolutions "except as expressly changed below to achieve the goals of this resolution".

II. Iraq has attempted to justify its opposition to and its rejection of international intervention in the demarcation of the boundary by referring in the note to its supposed attempts to convince Kuwait to delimit the boundary and its "sincere" desire to find a solution to the problem. According to Iraq, Kuwait "did not respond".

The time has come to shed full light on the historical events so that future generations will know what this "sincere desire" to resolve the boundary question really was.

At the end of 1971, Saddam Hussein declared that, if Kuwait wanted to put an end to the boundary problem, it should take initiatives, both at the national level and at the level of the Arab nation. The Minister for Foreign Affairs of Iraq, Murtada Sa'id Abd al-Baqi, explained, during a visit to Kuwait at the beginning of May 1972, what form those initiatives by the Government of Kuwait should take. They can be summarized as follows:

(a) Complete political coordination between Kuwait and Iraq;

(b) Investment of Kuwaiti capital in Iraq specifically;

(c) Authorization for the entry of Iraqi workers into Kuwait;

(d) Association of Kuwait with Iraqi defence planning;

(e) Creation in Kuwait of strategic zones reserved for Iraq, including the necessary access to the sea for the latter.

Earlier, Taha al-Jazrawi, Minister of Industry and member of the Revolution Command Council, had informed Sheikh Sabah al-Ahmed al-Sabah, Minister for Foreign Affairs of Kuwait, during talks which they held at Baghdad to study the boundary question, that the two Kuwaiti islands of Warbah and Bubiyan were of particular importance to Iraq, as a Gulf country. He had asked Kuwait to renounce them.

During that same visit, the Kuwaiti delegation, headed by Sheikh Sabah al-Ahmed, met with Saddam Hussein, at that time Vice-President of the Republic, who reiterated that demand.

Kuwait's reply was categorical: it was out of the question that it should renounce any part of its territory; that was inconceivable for any Kuwaiti.

That was the kind of initiative at the national level and at the level of the Arab nation which Iraq took to convince Kuwait to delimit the boundary and which affected Kuwait's homeland, sovereignty, will, territory and freedom and the management of its resources.

III. Once again, the Iraqi regime reiterates its repeated attempts, in the aforementioned note, and endeavours by all means to obstruct the delimitation of the boundary. It began by refusing to allow the Security Council to intervene in the delimitation, as we have indicated. It cast suspicion on the Commission and the choice of its members, asking to be allowed to have a role in that choice. But it is not for Iraq alone, but for Kuwait also to have such a role, since, under the mandate assigned to it, the Commission is a technical commission not an arbitration commission, nor a political commission called upon to decide on the course of the boundary or to make any modifications thereto. This is not within its competence since the Security Council, in defining the boundary between Kuwait and Iraq, has taken as a basis the text of the 1963 Agreed Minutes signed between the two countries.

In accordance with the functions entrusted to it, the Commission is confined to delimiting on the ground the boundaries specified in the said Agreed Minutes and to placing the border posts required for that purpose. Similarly, the choice of independent technical experts is the responsibility of the Secretary-General of the United Nations, who is responsible for carrying out the mission entrusted to him.

IV. The letter states that the Security Council resolution on the Boundary Demarcation Commission is unprecedented in the international Organization. That allegation is totally inaccurate and contrary to common knowledge, inasmuch as the League of Nations established similar commissions to demarcate the boundaries under its supervision in order to resolve the border conflict issues in certain parts of the world, and they arrived at the Treaties of Versailles (demarcation of the boundary between Poland and Czechoslovakia), Saint-Germain (between Austria and Hungary), Neuilly (between Bulgaria and Yugoslavia) and Trianon (between Hungary and Romania).

The casting of doubts in the letter on the Commission and its members is the procedure and fashion of this regime. It has cast doubts on the United Nations and the Security Council and has described them as tools in the hands of others seeking to injure it. That is an extension of its position of hostility to the world and its States whenever they stand in the way of its ambitions and its will to impose wrong by force and falsification. In particular, during the work of the Commission, Iraq has not registered one single objection against any of the independent experts there or cited a single fact indicating bias on the part of any of them.

V. By way of of seeking flimsy justifications, the letter objects to what was contained in the draft report of the Secretary-General of the United Nations, to the effect that the Commission could utilize appropriate technology relevant to the demarcation of the boundary and considers that vague, undetermined and requiring elucidation. The technology used in boundary demarcation consists of technical operations with well-known methods known to all specialists in this field, so that the Secretary-General's reference to it is surprising. The Commission has utilized this technology within sight of the Iraqi side and without any objection from it. The New Zealand/Swedish survey team carried out field work that laid the foundation for the vertical photographic maps of the Iraq-Kuwait border area. Four stations were established to supply data for survey control, as well as 25 major control stations at intervals of approximately 15 to 25 kilometres along the border. Its observation activity was conducted with Doppler and GPS equipment. The Swedish team carried out aerial photography operations using a commando jet aircraft specially equipped for this purpose from two main altitudes. Photographs were taken from each altitude, and picture control consisted of a network comprising more than 200 control stations with pre-processing of signals.

As a result of these operations, 29 vertical photographic maps were produced on the 1:25000 scale with elevation contours at 5-metre intervals. The map projection used in the preparation of the vertical photographic maps was the Universal Transverse Mercator (UTM) Projection, with an extension of 38 to the East to cover the boundary area fully.

Work was begun on the preparation of additional separate maps for the western part of the boundary known as Wadi al-Batin, and approximately 1,430 survey photographs were taken over a distance of 3.5 kilometres at intervals of 100 metres along the wadi. These pictures were used to determine the nearest line of a point in the wadi. Numerical ground samples were also established to plot the contours at 2 metres' elevation. In addition, three-dimensional pictures were used with the help of computers to interpret the data.

We should ask ourselves questions about the nature of the details and explanations sought by Iraq following this detailed exposition on the technology used in the Commission's work that we have summarized briefly here and which have been published at greater length by the Commission.

It is amazing that Iraq did not respond to the Commission's request to supply any information available to it relating to its mission and contented itself with promises. It promised to furnish documents and admits in its letter that it was unable to furnish them during the Commission's meetings. It blames the Commission and the United Nations for not waiting until Iraq had done so. Of course, it did not do so in spite of the lapse of more than a year between the first and the fifth meetings of the Commission, in which it announced that it had demarcated the land boundary.

Nevertheless, Iraq describes the work of the Commission as, in its opinion, unacceptably hasty, although until the last meeting of the Commission it was unable to give a firm deadline for the handing over of what it claimed it had. How much time was Iraq proposing that the United Nations, the Security Council and the issue of establishing security in this part of the world should wait until Iraq was ready to furnish its documents, which, it knows very well, as everyone knows, do not exist and are merely, as we have said, an extension of attempts in past decades to prevaricate in the demarcation of the boundary so that it should become a point of dissension to be exploited for obtaining gains and obfuscating the situation and the facts?

VI. The note reproaches the representative of Kuwait with having put leading questions to the independent experts. We do not understand what prevented the representative of Iraq from putting questions since he is a member of the Commission and has every right to ask for explanations and to state his views.

VII. The note of the Iraqi regime rejects what the Commission took as a basis in its interpretation of the course of the boundary south of Safwan, on the grounds that the Commission relied on cartographic considerations (although that was the very nature of the Commission's work), on documents and letters which had been exchanged between Britain and Iraq and on Iraqi maps! We do not understand why the Boundary Demarcation Commission is reproached for that.

The note justifies this objection by arguing that at that time Britain was the dominant colonial Power in the region and that the Iraqi maps on which the Commission had relied had not at the time they were drawn up been intended to demarcate the frontier.

These are objections which any fair and impartial person would reject. In the Agreed Minutes signed in 1963, after the end of British domination and Britain's withdrawal, at a time when Iraqi national rule had been established, Iraq explicitly declared, in appending its signature to paragraph 1, that "the Republic of Iraq recognized the independence and complete sovereignty of the State of Kuwait with its boundaries as specified in the letter of the Prime Minister of Iraq dated 21 July 1932 which was accepted by the ruler of Kuwait in his letter dated 10 August 1932".

Where then are the British pressure and the imperialist and hegemonistic force which would justify a disavowal of this recognition of the boundary line by Iraq? In reality, it is nothing but the greed of the current Iraqi regime, which has been confirmed by its treacherous invasion and its designs on the territory, population and existence of Kuwait!

The Iraqi regime's objection to the Commission's reliance on Iraqi maps is surprising. Its allegation that they are maps not drawn up for demarcation purposes is even more surprising. Surely the boundary entered on maps issued by a State are a decisive proof of its borders with its neighbours, whether they be utilized for demarcation or for other purposes.

VIII. The letter mentions that Kuwait moved the boundary more than 70 kilometres, with military forces and oil installations, basing its allegation on the fact that Kuwaiti passports had been stamped at the Mitla' checkpoint but were later stamped at Safwan, at a distance of 70 kilometres. We know of no relation between a passport checkpoint and the choice of its location as an international boundary.

In this context of falsification of the facts, Kuwait has travel documents that register the checkpoint as the town of Zubayr. Does that mean that Kuwait claims the extension of its frontier to Zubayr?

It is known in all States of the world that the checkpoint for departure may be at an airport located in the area of the city rather than at the frontier point.

The purpose of the Iraqi letter is clearly renunciation of the boundary-line indicated in the agreements signed by Iraq and a shift to other evidence that is totally unreasonable.

IX. The letter objects to two things on which the work of the Boundary Demarcation Commission is based. The first is its reliance on survey evidence alone and adoption of the geographical coordinates of longitude and latitude, without leaving scope for the furnishing of other evidence derived from appropriate materials (although Iraq does not specify the nature of these appropriate materials). The Boundary Demarcation Commission, in ensuring that the boundary corresponds to reality, must rely essentially on survey evidence, provided that the boundary is agreed previously, because the basis of the operation is congruence, not adjustment.

However, it is clear that the Iraqi letter wishes to distance the Commission from the task of demarcation in order to enter into the labyrinth of demarcating the boundary on the basis of the Iraqi regime's rejection of the boundary contained in the agreements, to embark on the seas of disputation where all parties will founder and to make a fresh start on the course towards a boundary demarcation agreement that will, of course, be rejected by the Security Council, the United Nations and the Commission, which proceed from international legitimacy and the binding agreements concluded.

The second thing to which the letter objects is that the Commission adopted the British map from the appropriate materials that it took as the basis for its work of demarcation. The letter proceeds to reject any boundary demarcation carried out by the British, even though Iraq is the one that officially endorsed it with the signatures of its presidents and ministers in the exchange of letters of 1932 and the Agreed Minutes of 1963, as we have explained. Nevertheless, the British map was not regarded as the basis for the Commission's work but as one of the appropriate materials, to be necessarily supported by other materials and was accordingly not used for some purposes.

We do not know why the Iraqi regime rejected the Iraqi maps issued by its Government, the boundary demarcation recognized by Iraq's agreements and the maps that were available at the time of the boundary demarcation and, rather than submit fresh documents or proofs, produced promises and prevarications about submitting them. On what can any agency undertaking the demarcation of the boundary rely, unless all that was deliberate hamstringing designed to place the international effort aimed at ending the problem in a vacuum, leaving the question of stability, security and peace in the region dependent on whoever possesses weapons and a will to aggression.

X. The letter objects to the fact that the representative of Kuwait accompanied the two independent experts on their investigations of the Safwan area, even though the representative of Kuwait accompanied them in accordance with the decision of the Commission, of which he is a member, and he only entered the border area under the auspices of the United Nations, within the framework of which the Commission operates.

In this context, the letter accuses Commission members of lack of neutrality, an accusation not based on any evidence. On the contrary, it is a random judgement intended to prejudice the Commission's work. In such matters, judgements should be based on firm evidence stemming from reason and credibility.

The Commission's decisions were not biased in favour of Kuwait as the Iraqi letter claims. The Commission decided to deprive Kuwait of its territorial waters in Khawr al-Zubayr, which means Iraq's full utilization of that channel. The Commission's decision in this matter is a clear response to the accusation of lack of neutrality launched against it.

The Iraqi letter seeks a way to nullify the agreement of its representative on the Commission to the demarcation of the Safwan point. The letter justifies that by saying that the representative of Iraq was "tricked contrary to the principles of ethics and good faith". We do not know what good faith or bad faith has to do with the facts, the boundary and the survey lines or how a representative of a State can be tricked in such a situation.

Although the agreement of the representative of Iraq and the Commission was based on the Iraqi letter presented to the British ambassador on 25 June 1940, wherein the Iraqi Government stated that the boundary line lay south of Safwan 1,250 metres from the old customs post, the Iraqi regime tried to renege on the Iraqi letter and the indicators marking the Safwan line contained in it.

This is a blatant contradiction. A letter of a State demarcates the beginning of a boundary line in an official letter in 1940 and now the Minister for Foreign Affairs of the State proceeds to reject and deny that, because any specification regarding boundary demarcation that does not suit the Iraqi regime, whether it be past or present, is rejected by it.

The letter continues its objections to the Commission's decisions and states that these decisions have led to the appropriation of large areas of Iraq's territory uncontested before this date, including its oil resources and the installations established by Iraq in that territory.

The letter deliberately omits any mention of the fact that was demonstrated beyond doubt or dispute by the technical survey operations of the Boundary Demarcation Commission. It was established that over the years Iraq had gone beyond the boundary lines accepted by it in the exchange of letters of 1922, and the Agreed Minutes of 1963 and had violated the border areas by force, encroachment and military aggression, as in the case of its armed attack and encirclement of the Kuwaiti Al-Samitah guardpost in 1973 and the other attacks launched by it on the border areas. Kuwait registered its objection at the time by successive official notes dating back to 1934 and set up those installations to serve as justification in the future for its claim to ownership of that territory.

International legitimacy does not bow to the fait accompli imposed by force. It calls upon the parties to show respect for the treaties they have signed and imposes on the encroaching party the obligation to return to his legitimate boundaries.

XII. The Iraqi letter regards the resolution admitting the State of Kuwait to the League of Arab States as null and void because the Minister for Foreign Affairs of Iraq was absent from the meeting of the Council. The letter claims that a decision admitting a new member to the League of Arab States must be supported unanimously by all members.

Iraq admits in its letter that Kuwait became a member of the League of Arab States and that that was due to a mistake made by Iraq's Minister for Foreign Affairs. How can this be expressly admitted together with a statement that the League decision is null and void?

However, the subsequent conduct of Iraq towards Kuwait confirms that, for approximately three decades, it has been dealing with Iraq as an independent State, on the one hand, and as a State member of the League of Arab States, on the other. This conduct is represented in the various aspects of diplomatic, political, economic, social and cultural interaction.

XIII. The Iraqi letter alleged that "the Kuwaiti authorities themselves acknowledged their trespass" on Iraqi oil wells through His Highness Sheikh Saad al-Abdullah al-Sabah, the Crown Prince and Prime Minister, during a meeting with the Deputy Chairman of the Iraqi Revolution Command Council at Jeddah on 30 July 1990. No such statement was made either at the talks conducted during that meeting or on any other occasion. Kuwait held to the view expressed in the two official letters submitted by the Deputy Prime Minister and Minister for Foreign Affairs to the Secretary-General of the League of Arab States on 18 and 21 July 1990, in reply to the Iraqi letters of 15 and 21 July 1990.

Kuwait affirmed, in front of the Iraqi delegation at the Jeddah meeting, that it was prepared to set up neutral commissions to examine all issues arising between the two parties, including the question of the oil wells. However, the Iraqi side did not reply to the proposal, preferring instead to launch its treacherous surprise attack against Kuwait only hours after the meeting ended.

XIV. In its challenge to the decisions of the Boundary Demarcation Commission, Iraq's letter resorts to that country's consistent practice of reneging on every agreement or commitment into which it has entered and imposing instead its viewpoints and ambitions as facts which must be accepted and complied with by all. Accordingly, it has interpreted the decisions of the Boundary Demarcation Commission, and indeed anything which conflicts with its wishes, as an act of colonialism and an international conspiracy.

By way of example, it rests its claim to Kuwaiti territory and islands in the Gulf not on any agreements which it has concluded or on historically documented boundaries but on its status as a coastal State which must have an outlet to the Gulf. It chooses that this outlet should be located in the territory of its neighbour, Kuwait, and insists that its demand must be translated into reality, regardless of whether that claim is justified or not. It is deliberately ignoring the well-known facts that it already has a 40-kilometre coastline at Al-Faw and that it controls the entire northern shore of Khawr Abdullah (35 kilometres) and Mina al-Bakr, which, following expansion, can now accommodate supertankers.

All nations have aspirations, with some seeking warm-water ports and others desiring areas rich in minerals or other resources. If such aspirations were allowed to become reality through imposition by force, the map of the world would be altered and further successive wars would consume human lives and deprive mankind of the benefits of progress in ensuring increased respect for the rule of law, good-neighbourliness and legitimacy.

Iraq's letter, inspired as it is by covetous fancy, states that its chosen maritime outlet lies in what it refers to as a "small village established some two centuries ago on the banks of the Arabian Gulf under the name of 'Kuwait'". When it refers to Kuwait in this way, it appears to deny the State's existence because of its small population and surface area. If the world were to adopt that approach, many effectively existing nations would disappear from the map. Countries should be measured by their performance and vitality rather than by their size or population.

XV. Iraq claims that it is not bound by the Agreed Minutes of 1963 because its legislative authority did not ratify them. Our answer to this assertion is as follows:

1. The question of whether an agreement is subject to ratification or not depends on the intentions of the parties concerned, which in turn depend on the circumstances, context and subject of the agreement.

Benheim (an expert on international law) says that, in the case of a protocol, a statement or an exchange of letters, there is no requirement for ratification - unless specifically stated otherwise - if any of the aforementioned agreements represents no more than the addition of a point of minor significance or the registration of an agreement between the two parties concerning the interpretation of an item in the original treaty.

As is well known, the Agreed Minutes do not abolish any boundaries or establish others in their place. With respect to the boundary issue, they simply record an acknowledgement of boundaries on which agreement had already been reached.

If we suppose for the sake of argument that ratification of the agreement was required, then the responsibility for failure to comply with the conditions for ratification rests with the defaulting State rather than with the other party to the agreement. It is the defaulting State which must bear the consequences of the unratified agreement. To claim otherwise would have the effect of entitling other States to interfere in the internal affairs of nations on the grounds that they were testing the agreement and verifying the soundness of ratification procedures. This is not acceptable in international practice.

2. It was the intention of the two contracting parties, Iraq and Kuwait, that the Minutes should be implemented immediately following their signature. This is indicated by the fact that most items of the Minutes were indeed implemented, such as recognition, the exchange of diplomatic representation,

the establishment of a commercial and economic agreement, etc. The Kuwaiti side provided financial assistance amounting to 30 million dinars in accordance with the agreement.

3. Other agreements with Iraq (meaning those on matters other than the boundary) specifically stated that ratification was required, including, for example, the protocol on bilateral cooperation between Iraq and Kuwait. This shows that the practice established between the two countries requires the incorporation of a specific provision concerning ratification if the intentions of the two parties so require. The failure to incorporate such a provision into the documents concerning the boundary is a strong indication that such ratification was not required.

4. The Minutes were registered with the Secretariat of the United Nations on 10 January 1964 without any objection from either of the two States to the Minutes' coming into force on the grounds of non-ratification.

5. The Iraqi regime's objection to and constant violations of this agreement are nothing new. The regime has been in the habit of breaking all international agreements and treaties which are incompatible with its expansionist designs. Before the beginning of its war with Iran, it repudiated the Algiers Agreement of 1975 with Iran concerning the Shatt al-Arab and then announced its recognition of the Agreement once again after its invasion of Kuwait. The very fact of its invasion of Kuwait, thereby breaking and violating related Arab and international pacts, is in itself irrefutable evidence of the regime's inclinations and behaviour, namely, a failure to respect any law or regional or international treaty. Accordingly, and particularly with regard to this issue, Kuwait is firmly convinced that the will of the international community is the only appropriate instrument which must be applied to such a regime to enforce its respect for international laws and treaties.

XVI. The Iraqi letter attempted to draw the United Nations and the Security Council into labyrinths of allegations about Kuwait's historical existence which have already been answered and investigated from documented scholarly sources and in respect of which evidence, maps and studies showing the pursuit of this historical illusion to be a waste of time have already been published. Kuwait is a land, a people and a real historical State which is not susceptible to denial. This practice of alleging historical rights is entirely incompatible with the fundamental principles established under international law whereby the boundaries between neighbouring States which define the territory of each individual State in accordance with the boundaries drawn prior to their independence are considered to be binding. This principle was applied between Latin American States and was confirmed by the leaders of the African continent at the African summit meeting in 1964 for the purpose of settling border issues and disputes.

The Security Council adopted these principles when it endorsed the boundary agreed to by Kuwait and Iraq in 1932 and 1963, in conformity with studies on international law which rule out any repudiation of boundary agreements on the grounds that they have not been ratified.

Meanwhile, an objective scholarly study of the question of the boundary between Kuwait and Iraq always reaches the same conclusions, namely, those on the basis of which the world decided to support Kuwait and its cause.

The reason for this support is clear. The boundaries claimed by Kuwait are recorded in documents, maps and well-known internationally documented agreements which are not denied or contested by anyone other than those who espouse contrariness and falsify attested facts.

The history of these documents goes back to the time before Iraq's emergence as an independent State. They are not fabricated for the purpose either of inventing evidence or of claiming spurious rights raised when the border dispute erupted; they are firm, documented historical facts.

Any neutral historian will recognize that for almost three centuries (1709-1992) Kuwait - this land overlooking the north shore of the Arabian Gulf - has continued to exist as a distinct entity, maintaining its independence under all circumstances and despite all changes. The relationship of this distinct entity to the Ottoman State, whose influence extended throughout Iraqi territory, was clear: it was confined to the general Islamic ties which linked Islamic lands under the Ottoman caliphate. There was no Ottoman presence in any part of Kuwait's territory, neither was there any form of political subordination. The relationship was a religious one, did not affect independence and did not detract from the Kuwaiti people's sovereignty over their territory.

This distinct and independent nature was demonstrated by the Kuwaiti people's self-reliance in defending themselves against tribal attacks and raids on Kuwait without assistance from the Ottoman authorites in Basra or Baghdad. They themselves - without help from anyone - built the walls of Kuwait in 1760 to protect their city.

Further evidence may be seen in the fact that Kuwait served as a refuge for rebels against the Ottoman authorities in Baghdad. Both Sheikh Thuwayni, the Sheikh of Muntafaq, and Mustafa Agha, the Governor of Basra, took refuge with Sheikh Abdullah al-Sabah, the Ruler of Kuwait (1762-1815) after rebelling against Suleiman Pasha, the Vali of Baghdad. Sheikh Abdullah refused to surrender them, despite a threat to attack Kuwait and force it to do so.

Kuwait's lack of subordination to the Ottomans is demonstrated by the fact that the Ruler of Kuwait permitted the British Agency of the British East India Company to be transferred from Basra to Kuwait (1793-1795) following a dispute with the Ottoman authorities. This could not have happened if Kuwait had owed allegiance or been subordinate to the Ottoman State.

If we set aside the evidence, testimonies and reports of travellers and politicians to consider instead the position of Kuwait in atlases, we find even stronger evidence of Kuwait as a distinct entity, particularly in two nineteenth-century maps, as follows:

1. The map of Carl Ritter, a German scholar and one of the founders of modern geography. Kuwait is included on the German-language map of the Arabian peninsula published in 1867 on the authority of his book Erdkunde (Geography), which appeared in several dozen volumes from 1818 onwards.

Kuwait is referred to as "Kueit or Korein" within a district encompassing its present location and including Warbah, Bubiyan and parts of southern Iraq. The map was printed in Berlin and is kept at the Cambridge University Library (Map No. C.336.58.1).

2. The map of the Arabian peninsula is contained in the journal of Arabian travel compiled by W. G. Palgrave in 1862-1863. This shows Kuwait in a colour marking it as completely independent from the other political entities in the region, meaning the Ottoman State to the north and Najd in the south. It is to be noted that the northern boundaries of Kuwait include Warbah and Bubiyan, as well as the west bank of the southern part of the Shatt al-Arab, including Umm Qasr and most of Al-Faw.

The agreement of 1913 between the Ottoman State and Britain contains no ruling whatsoever that Kuwait should be subordinate to the province of Basra, as repeatedly asserted in the Iraqi letter. Article 2 of the agreement specifies that the Sheikh of Kuwait shall exercise independent authority in his territory and that the Ottoman Government shall refrain from interfering in Kuwait's affairs, including the issue of inheritance, as well as from any other administrative activity and from any occupation or military action in the districts belonging to Kuwait.

Nevertheless, the agreement detached various parts of Kuwait's territory in Iraq's favour, in accordance with a request made by Sheikh Mubarak al-Sabah on the basis of documents and historical facts.

Iraq itself recognized these established facts and affirmed them on two occasions when it clearly recognized the State of Kuwait and its boundaries, in 1962 and 1963 respectively. The Annual Report of the Republic of Iraq for 1988 bears witness to this fact by way both of the information it includes on Kuwait as a neighbouring fraternal State and of the map accompanying that information, which locates the Kuwait-Iraq boundary very close to where it was eventually placed by the United Nations Boundary Demarcation Commission.

It is to be hoped that this review will serve to disperse all fancy and delusion and to establish the foundations of the truth, namely, that the administrative entity and political borders of Kuwait are a historical fact the features of which were clear over half a century before Iraq's independence.

XVII. Despite the lesson received by the Iraqi regime when it asserted that it was undertaking an invasion in response to appeals on the part of the Kuwaiti people, inasmuch as what it found was a people united behind its leadership, opposing the aggressive regime in a resistance, witnessed by the entire world, that came into being with considerable self-sacrifice - for

indeed, the documents left behind by the invading forces at liberation showed the extent of the terror and consternation from which those invading Iraqi forces suffered on experiencing the resistance of the Kuwaitis - despite all that, this Iraqi letter goes back half a century, in the illusion that one can distort history and twist the facts in order to challenge Kuwaiti national unity by asserting that at the time of the first Legislative Council, during the reign of Sheikh Ahmad al-Jaber, the Council members called for the unification of Kuwait with Iraq! It also asserts that the free youth of Kuwait asked the Iraqi Government for assistance for that purpose - it is the same theme, being repeated half a century later.

It will suffice, in order for us to refute these claims, to go back to the letter presented by those youths, who met with the Amir of Kuwait, calling for a number of reforms and the constitution of a Legislative Council:

> "The course of events and the present conditions of the country have encouraged the sincere among your subjects to turn to you with earnest advice in their desire to come to an understanding with you concerning what may be a beneficial approach and a proper manner of warding off adversities from themselves and from you, preserving the existence of our country and safeguarding our independence, their sole aim being to remove the causes of complaint and to effect reforms."

This letter bespeaks only love and affection and the exchange of sincere advice between the shepherd and his flock, stressing the independence of Kuwait and the preservation of its existence.

At the close of this review of the statements made by the Iraqi Minister for Foreign Affairs in his letter concerning the conclusions of the Boundary Demarcation Commission, we are firmly convinced that his letter is nothing other than a link in an endless chain of attempts to create obstacles to a definitive conclusion of the boundary issue between Iraq and Kuwait.

Iraq is seeking to remove the problem from its present sphere, governed by international legitimacy, to the sphere of bilateral relations, in which Kuwait has, throughout its life, held out its hand with love and cooperation, offering dialogue and assistance in an absolute commitment to brotherliness, neighbourly rights, historical ties and shared destiny to its neighbour and brother; yet the reply was a hostile bullet pointed at its heart and aggression aimed at its existence and its land and the taking of lives and property.

The Iraqi regime believes that by once again raising a clamour in the news it can hamper the legal process and thwart the countries of the world in their insistence on restoring to the region security, stability and secure boundaries which the Security Council guarantees to protect; but it is time for the Iraqi regime to give up this belief, to face reality and to cooperate with its neighbours on a principled basis in a meeting between equals.

It would have sufficed, in order to refute this letter with all its particulars, to call attention to the clear statement which, after all the disastrous events for which it was to blame, it made in its letter, concerning its refusal to accept peaceful coexistence with its neighbours to the effect that under no circumstances would Iraq accept any formula relating to demarcation, British or otherwise.

Yet, in deference to Arab and world public opinion, against which the letter of the Iraqi regime has been published, we considered it our duty to provide the facts together with the documents presenting the correct information concerning them, hoping for a return to reason and truth and placing our trust in God.

(Signed) Sheikh Salem Sabah al-Salem AL-SABAH
Deputy Prime Minister and
Minister for Foreign Affairs

UNITED
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General Assembly Security Council

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A/47/256
S/24061
4 June 1992
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GENERAL ASSEMBLY
Forty-seventh session
Item 98 (b) of the preliminary list*
HUMAN RIGHTS QUESTIONS, INCLUDING
ALTERNATIVE APPROACHES FOR IMPROVING
THE EFFECTIVE ENJOYMENT OF HUMAN
RIGHTS AND FUNDAMENTAL FREEDOMS

SECURITY COUNCIL
Forty-seventh year

Letter dated 3 June 1992 from the Chargé d'affaires a.i.
of the Permanent Mission of Iraq to the United Nations
addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit herewith a letter addressed to you on 2 June 1992 by Mr. Baha al-Din Ahmad, Chairman of the Legislative Council of the Kurdish Autonomous Region in the Republic of Iraq, concerning the illegality of the elections held in the Autonomous Region on 19 May 1992.

I should be grateful if you would have this letter, together with its annex and enclosure, circulated as an official document of the General Assembly, under item 98 (b) of the preliminary list, and of the Security Council.

(Signed) Samir K. AL-NIMA
Chargé d'affaires a.i.

* A/47/50.

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ANNEX

Letter dated 2 June 1992 from the Chairman of the Legislative Council of the Kurdish Autonomous Region in the Republic of Iraq addressed to the Secretary-General

Under the Constitution of the Republic of Iraq and the Law on Autonomy (No. 33 of 1974), the Kurdish population of Iraq enjoys autonomy.

The first Legislative Council was elected in accordance with the aforementioned Law, as well as the Law on the Legislative Council of the Kurdish Autonomous Region (No. 56 of 1980) in November 1980. Elections were held in 1983 for the Council's second session and in 1986 for its third session. Elections were held on 9 September 1989 for the fourth session of the Legislative Council, of which I am currently the Chairman.

Under the aforementioned Law on Autonomy, each elected Legislative Council gives rise to an Executive Council responsible for administration of the Region's local affairs, subject to its retaining the confidence of the Legislative Council.

Before the latest elections to the Legislative Council in September 1989, invitations to attend the elections were issued to journalists and reporters of many countries' radio and television stations. A number of journalists and reporters from France, Turkey, Venezuela, Brazil, Germany, Sweden, Austria and Morocco did attend: we enclose herewith a list showing the names of some of those who attended the elections.

Those who attended were witnesses to the fact that the elections were held in accordance with the country's Constitution and laws, under conditions of security and stability in the Region and in a healthy atmosphere of freedom. Voter participation amounted to over 90 per cent of the region's population.

On 19 May 1992, a process referred to as "elections" took place - in violation of the country's Constitution and its prevailing legislation - in the area controlled by armed militias of parties belonging to the so-called Kurdistan Front, which are in turn under the military control of the United States, Britain and France.

All the evidence indicates that the majority of those living in the Region who participated in the elections were forced, at gunpoint, to take part in this unlawful process. Even representatives of the parties themselves admitted the occurrence of widespread fraud, as reported in many newspapers, particularly in Western countries. Furthermore, they then declared a result which would appear odd in any election, wherever in the world it took place, namely, a dead heat between the two political organizations with the most armed men in the Region. This is an artificial result which cannot possibly occur in any proper election. The result was declared several days after the

polls closed and after protracted meetings between the leaders of the two organizations and intervention on the part of representatives of America, Britain and France.

Kurdish citizens of Iraq represented by the Legislative Assembly of the Kurdish Autonomous Region, which was elected in accordance with the country's Constitution and prevailing legislation, do not recognize the process which took place on 19 May 1992 or its results. Those who claim to represent Iraq's Kurds but are protected by the spears of America, Britain and France do not represent the Kurds.

In fact, the elections were held at the prompting of the United States, Britain and France, three permanent members of the Security Council: their military representatives played an active role in organizing the elections and imposing their illogical and unlawful results.

The three aforementioned permanent members of the Security Council have in so doing violated the Charter of the United Nations, which, in Article 2, paragraph 7, affirms respect for the sovereignty of States and peoples, and violated those Security Council resolutions which have emphasized the preservation of Iraq's sovereignty. The Security Council resolutions relating to Iraq affirmed "the commitment of all Member States to the sovereignty, territorial integrity and political independence" of Iraq and all nations of the region. In addition, these States, which profess to uphold democracy, have violated the principles of democracy by encouraging the conduct of elections under their military protection. How can such a process be democratic when the area is controlled - under protection from those States - by large numbers of armed militias which do not observe law or order and impose their will on the population by force of arms?

What has happened in the Kurdish Autonomous Region - at the instigation and under the protection of three permanent members of the Security Council - constitutes a dangerous precedent for the international community. The three aforementioned States and those which followed in their footsteps bear the major responsibility for what has occurred.

We repeat once again - on behalf of the Legislative Council of the Kurdish Autonomous Region, the lawful representative body freely and duly elected under Iraqi sovereignty - our rejection of this process imposed by foreign forces and falsely conducted in the name of Iraq's Kurds. We accord no recognition to this process whatsoever and consider it unlawful.

(Signed) Baha al-Din AHMAD
Chairman of the Legislative
Council of the Kurdish
Autonomous Region

ENCLOSURE

Names of journalists who attended elections to the Legislative Council of the Kurdish Autonomous Region in September 1989

No.	Name	Nationality	Newspaper
1.	Kurcan Farar	Turkey	Sabah
2.	Namak Kucak	Turkey	Hürriyet
3.	Murad Uzgair	Turkey	Günes
4.	Huluk Gray	Turkey	Turkish Times
5.	Urhan Oghuroglu	Turkey	Günaydin
6.	Michael Matia	Venezuela	El Diario de Caracas
7.	Elsie Bardiza	Venezuela	Canal 8
8.	Amari Baskythe	Venezuela	El Universal
9.	Francisco Camayurbaios	Venezuela	Head of Press Section, Supreme Electoral Council
10.	Lithin Valero	Venezuela	Chief Editor, Panorama
11.	Najib Zafia	Venezuela	Chief Editor, Lebanon Today (Spanish edition)
12.	Luis Biardo Sadri	Venezuela	International writer, critic and analyst
13.	Angel Birusso	Venezuela	Canal 11
14.	Giovanni Taivin	Venezuela	Radio Suave
15.	Cristina Gonzales	Venezuela	Ultimas Noticias
16.	José Ocanto	Venezuela	Director, El Impulso
17.	Catherine Gentil	France	TF 1
18.	Pascal Richard	France	La Cinq
19.	Claude Lorbet	France	Le Figaro
20.	Thierry Garçon	France	Radio France International
21.	Jean-Pierre Berne	France	Correspondent, Agence France-Presse
22.	François Loubine	France	L'Express
23.	Paulo Federico Sofura	Brazil	Chief Editor, Fôlha de Pernambuco

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No.	Name	Nationality	Newspaper
24.	Olando Nicolain	Brazil	Director, Jornal da Amazona
25.		Germany	Die Welt
26.		Germany	_____ network
27.	Mateus Lundurted	Sweden	Dagens Nyheter
28.	Ali al-Alawi	Morocco	Writer
29.	Muhammad Bukhalifah	Morocco	Wikalat al-Maghreb al-Arabi
30.	Muhammad Khayr al-Din	Morocco	Al-Ittihad al-Ichtiraki
31.	Umar al-Lakuri	Morocco	Al-Alam
32.	Ali Islam Yusirghi	Morocco	Rissalat al-Oumma
33.	Al-Husayn Afar	Morocco	Rissalat al-Oumma
34.	Tali'ah al-Aklasi	Morocco	Anoual
35.	Sa'd Kaywan	Morocco	Il Manifesto (Italy); resident in Italy
36.	Hans Kingstrein	Austria	Vorarlberger Nachrichten

UNITED
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Security Council

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GENERAL

S/24062
4 June 1992

ORIGINAL: ENGLISH

NOTE VERBALE DATED 29 MAY 1992 FROM THE PERMANENT REPRESENTATIVE OF LIECHTENSTEIN TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Representative of the Principality of Liechtenstein to the United Nations presents her compliments to the Secretary-General of the United Nations and, with reference to paragraph 8 of Security Council resolution 748 (1992) of 31 March 1992, wishes to inform the Secretary-General that the Government of the Principality of Liechtenstein has enacted legislation prohibiting any traffic with arms and related materials with the Libyan Arab Jamahiriya.

The Permanent Representative of the Principality of Liechtenstein to the United Nations wishes to inform the Secretary-General further that the Government of the Principality of Liechtenstein will fully comply with the other obligations set forth in the resolution.

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Security Council

Distr.
GENERAL

S/24063
4 June 1992

ORIGINAL: ENGLISH

NOTE VERBALE DATED 1 JUNE 1992 FROM THE PERMANENT REPRESENTATIVE OF VIET NAM TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Representative of the Socialist Republic of Viet Nam to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to refer to the latter's note dated 3 April 1992 concerning Security Council resolution 748 (1992).

In this regard, the Permanent Representative of Viet Nam has the honour to inform the Secretary-General that Viet Nam will comply with Security Council resolution 748 (1992).

The Permanent Representative would be grateful if the Secretary-General would have this note verbale circulated as a document of the Security Council.

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Security Council

Distr.
GENERAL

S/24064
4 June 1992
ENGLISH
ORIGINAL: FRENCH

NOTE VERBALE DATED 29 MAY 1992 FROM THE PERMANENT REPRESENTATIVE OF MOROCCO TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Representative of Morocco to the United Nations presents his compliments to the Secretary-General of the United Nations and, with reference to paragraph 8 of Security Council resolution 748 (1992), has the honour to inform him of the following:

Since 15 April 1992, the Moroccan Government has been fulfilling its obligations under the terms of Security Council resolution 748 (1992).

Morocco reiterates the hope that the States Members of the United Nations will fulfil their obligations under all Security Council resolutions.

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Security Council

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GENERAL

S/24065
12 June 1992

ORIGINAL: ENGLISH

REPORT OF THE MISSION DISPATCHED BY THE SECRETARY-GENERAL TO INVESTIGATE AN ALLEGED USE OF CHEMICAL WEAPONS IN MOZAMBIQUE

Note by the Secretary-General

1. In a letter dated 27 January 1992 the Permanent Representative of Mozambique informed the Secretary-General that, following military operations by Mozambican government forces against forces opposed to the Government, on 16 January 1992 the government forces had been subject to an attack in which a chemical weapon was alleged to have been used. The Permanent Representative, on behalf of his Government, requested that a United Nations team of experts be dispatched to Mozambique to investigate the incident.

2. After having requested further information and clarifications from the Government of Mozambique and having been informed of the preliminary results of an investigation carried out on the request of the Government of Mozambique by experts from the National Defence Research Establishment of Sweden from 5 to 11 February 1992, the Secretary-General reached the conclusion that an investigation in Mozambique was warranted, although the passage of a considerable amount of time since the date of the incident was feared to have substantially diminished the possibility of determining what chemical agents, if any, might have been involved.

3. Accordingly, the Secretary-General, under his own authority, decided to appoint a mission of three qualified experts, with the assistance of two United Nations officers, for this investigation. The President of the Security Council was informed of the decision in a letter from the Secretary-General dated 26 March 1992. Following contacts with various experts and research institutions, whose willingness to assist the Secretary-General in similar situations had previously been made known to him, it was possible, on 18 March 1992, to appoint the following two experts:

Dr. Sven-Ake Persson
Professor of Toxicology, Research Director
National Defence Research Establishment
Sweden

Mr. Heiner Staub
Chemical Engineer
NC-Laboratory Defence Technology and Procurement Agency
Switzerland

4. The third expert was appointed on 24 March 1992, namely:

Dr. J. P. Thompson
Head of Human Studies
Chemical and Biological Defence Establishment
United Kingdom of Great Britain and Northern Ireland

5. In the meantime, in a letter of 13 March 1992 addressed to the Secretary-General, the Permanent Representative of Mozambique reiterated his Government's strong wish to have a United Nations investigation team in Maputo at the Secretary-General's earliest convenience.

6. The work of the mission was coordinated by Mr. Johan Nordenfelt, Director, Office for Disarmament Affairs of the Department for Political Affairs, who facilitated its organization and ensured liaison with the competent authorities. He was assisted by Mr. Shigeru Mochida, Political Affairs Officer of the same Department.

7. Four members of the mission arrived in Maputo on 23 March 1992 and were joined on 24 March 1992 by its fifth member. In the course of their investigations members of the mission were able to go to the location identified by the authorities of Mozambique as the site of the incident, at which a chemical weapon is alleged to have been used, and to collect various types of samples. The mission concluded its investigations in Mozambique on 27 March 1992 and the qualified experts submitted a joint report to the Secretary-General on 1 April 1992. The samples have since been analysed independently at laboratories in Sweden, Switzerland and the United Kingdom.

8. The Secretary-General wishes to express his appreciation to the Governments of Sweden, Switzerland and the United Kingdom for making available the services of these eminent experts and the facilities of their laboratories to carry out the independent sample analyses. The results appear as appendices III to V to the experts' report (see annex).

* * *

9. In transmitting the report of qualified experts (see annex) to the Security Council, the Secretary-General notes that the experts determined that the Mozambican government forces sustained casualties not entirely explicable by the kind of weapons so far in use in the conflict in Mozambique. From the material available to the qualified experts it was not possible to determine whether or not a chemical weapon was used against Mozambican government forces. However, the mere possibility that chemical weapons may be used in the continuing armed conflict in Mozambique points to the urgency of finding a peaceful settlement. It is the Secretary-General's sincere hope that the

peace talks between the Mozambican Government and the Mozambican National Resistance (RENAMO) will lead to a satisfactory solution as soon as possible, to benefit not only the Mozambican population but also the stability of the Southern African region in general.

Annex

Report of experts dispatched by the Secretary-General to investigate allegation of the use of chemical weapons in Mozambique

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LETTER OF TRANSMITTAL

Geneva, 1 April 1992

Sir,

We have the honour to submit herewith our report on the investigation you requested us to undertake concerning the alleged use of a chemical weapon in Mozambique.

In order to undertake the investigation, we visited Mozambique from 23 to 27 March 1992 (24-27 March 1992 for Dr. Thompson) for the purpose of carrying out the collection and examination of evidence as well as for interviews with those affected by the alleged use of chemical weapons and medical personnel who had been involved in treating and/or examining them. Although we were appointed in our individual capacities, we agreed to work as a team and our conclusions were reached unanimously.

Prior to the current investigation, both Dr. Persson and Dr. Thompson had conducted separate investigations at the request of the Government of Mozambique and have presented their reports to it. These reports were made available to the United Nations team by the Mozambican Government. An official report of the Government of Mozambique was also made available to the team. In addition, through the Office of the Trade Representative of South Africa, the United Nations team was able to obtain briefings by a South African doctor who had also conducted an investigation into the matter. His report was later made available to the United Nations team during its stay in Geneva. Although the present report was elaborated by the United Nations team on the basis of its own investigations, the aforementioned reports none the less served as valuable background material, together with the prior experience that two of the three experts on the United Nations team had gained.

In undertaking the present mission, we received support from many organizations and individuals. In particular, we would like to record our thanks to the Government of Mozambique for the cooperation and assistance provided by its various agencies throughout our mission.

We also wish to express our appreciation for the assistance we received from the United Nations Secretariat, particularly from Mr. Johan Nordenfelt and Mr. Shigeru Mochida of the Department of Political Affairs.

Our special thanks are due to the laboratories in Switzerland, Sweden and the United Kingdom currently assisting us by undertaking on our behalf analyses of samples collected at the location identified by the authorities of Mozambique as the site of the incident at which a chemical weapon is alleged to have been used.

We wish, Mr. Secretary-General, to express our gratitude to you for the confidence you have placed in us.

Yours sincerely,

Dr. S.-A. Persson
Mr. H. Staub
Dr. J. P. Thompson

/...

I. METHODOLOGY

1. In order to carry out our task, we adopted as required the following approaches:

(a) Interviews with government officials in Maputo in order to obtain information regarding the alleged use of chemical weapon(s);

(b) Visit to the war zone in the Ngungue region in order to obtain evidence regarding the alleged attack and to collect samples for chemical analysis in specialized laboratories;

(c) Interviews conducted with a number of patients who were allegedly exposed to an attack using chemical warfare agent(s) and with physicians who had treated them;

(d) A review of information concerning the incident obtained by two of the experts on previous visits to Mozambique;

(e) A review of information provided by a South African doctor who had conducted an investigation into the incident.

2. The team conducted its investigation in Mozambique from 23 to 27 March 1992. It then proceeded to Geneva to discuss evidence obtained and to produce a report to the Secretary-General.

3. The team must point out that a considerable delay occurred between the alleged incident and the investigation.

II. THE INCIDENT

4. The following account of the circumstances surrounding the incident of 16 January 1992 is based on the generally consistent testimonies of the soldiers who were present at that incident. Where testimonies contradicted each other on significant points, these points are indicated.

5. The Third Battalion of Commandos of the Mozambican government forces, reinforced with one company of provincial troops, left to attack a RENAMO base close to the South African border. The Third Battalion consisted of three companies and the total number of troops involved was approximately 300 to 400.

6. They initially travelled by vehicle, but on 14 January 1992 they left the vehicle near Corrumane. They continued on foot as a column of troops and set up a small camp for the night. On 15 January, they continued on foot in the same formation, moving north. A cyclist carrying a weapon was sighted. When alerted, he ran off. Having seen traces of RENAMO troops in the area, they changed into a box formation with one company forming each side of the box. They continued until they were a few kilometres south of the RENAMO base. As

it was getting late, they decided not to attack that day, but to set up camp for the night and attack the next morning. A reconnaissance group was sent out. They returned, confirming the location of the base and the position of the South African border. During the night, sounds of domestic animals were heard.

7. At daybreak on 16 January, they moved off in box formation towards the RENAMO base. As they approached the camp a white jeep-type vehicle was seen in the vicinity of the camp. Some troops reported seeing it on the South African side of the border. Others reported seeing it crossing the border into Mozambique. At about this time, a light aircraft was seen flying along the border.

8. The troops passed into the recently deserted RENAMO base, still in box formation. No resistance was encountered and the troops continued through the base without destroying it. They left the base. Several kilometres from the base they came under limited small-arms fire (no more than 15 shots) from a hill in the direction from which they had come. They took cover and there was an explosion overhead within the outline of the box. There is little doubt that the troops were in a box formation. However, there were some inconsistencies as to exactly which company was on which side of the box at the time of the attack.

9. The explosion occurred in the air, producing dark smoke which then dissipated. The wind was blowing towards the rear of the formation. The weather was sunny and described as normal for the time of the year. A single bang was heard with no particular smell or prior warning. They had not seen a similar explosion before and it did not produce alarm in the troops. No instantaneous casualties were caused. They remained at the site of the explosion for several minutes and then moved off. After approximately 15 minutes, the first complaints occurred and there were problems keeping the soldiers moving onward. Some soldiers were unable to get up and some followed but could not keep up and either took their own route or remained on site. Control was lost. The main body, under the Commander, continued, probably south, but after a short distance was again forced to stop. It appears that they remained in that place until dusk.

10. The main body tried to move on once more. By now many were littered along the route and uncontrolled firing of rifles broke out from time to time, from those lying down and from those on the move. During the firing, which appears to have continued for several hours, at least two soldiers were killed. The force, over a period of time, in groups of various sizes with the more able assisting those in a bad state, returned over a period of several days. None of those interviewed can recall the return route in detail. Some troops reached a small lake before returning to the vehicles.

11. After the first troops reached the vehicles a small group of soldiers was sent back to look for missing personnel. Some troops returned directly to the barracks and others were admitted directly to Maputo Military Hospital. Some troops deteriorated having returned to the barracks and were subsequently

admitted to hospital. The casualties were admitted over the period from 18 to 27 January 1992.

12. The following information was supplied by the Mozambican authorities:

Total number of Mozambican troops involved	382
Reported dead and transported to Maputo	4
Wounded during uncontrolled shooting	2
Admitted to Maputo Military Hospital	28
Missing	38

III. MEDICAL ASPECTS

13. The earliest symptoms following the attack included a feeling of tremendous heat within minutes of the attack, a severe thirst, dry mouth and sore throat. The air felt hot to breathe and chest pains were reported. Some casualties tore off their clothes and poured water over themselves. In severe cases, casualties dug scrapes in the ground to avoid the heat. Some casualties reported that sweating stopped following the attack.

14. In severe cases, profound muscular weakness occurred within one hour of the attack. In others, the onset of weakness was delayed for several hours. It was suffiently severe to prevent casualties from walking. In some casualties, lethargy occurred after several days and took several further days to reach its maximum. Some casualties left their weapons behind because they were too heavy to carry.

15. Visual disturbances were common and lasted several days. In particular, there were difficulties in focusing on distant objects. Some casualties reported narrow visual fields with objects appearing smaller than expected. The eyes did not water and were not particularly painful. Medical staff reported that casualties had dilated pupils on admission to hospital.

16. Confusion, disorientation, emotional lability and irrational behaviour occurred early in some casualties. Some muttered insults about their colleagues or made intimate, personal comments about their past life. Confused behaviour continued for several days. The more severely affected casualties seemed detached, passive and mentally slow during interviews.

17. After the explosion, some casualties had difficulty hearing and some complained of a ringing sensation in their ears.

18. The symptoms described above were reported by many of the casualties. Less common symptoms and signs included retching, vomiting, red urine, dysuria, urinary hesitancy and a blood-stained cough. Constipation was relatively common.

19. Skin lesions were not reported. There were no convulsions.

20. Early deaths, within one or two hours, were reported, as were casualties suddenly falling to the ground and dying, while trying to walk out of the area. On examination, medical staff reported that one casualty had had a haemorrhagic gastritis on gastroscopy. Examination of casualties by a member of the present United Nations team, two weeks after the attack, was generally unremarkable. Some casualties appeared passive and mentally slow. One casualty had sustained a stroke affecting his right side and had signs of a left lower lobe respiratory infection.

Discussion of symptoms

21. The symptoms and signs exhibited by the casualties are similar to those that could be caused by exposure to an atropine-like agent. Some of the symptoms could also be due to heat stress induced by dehydration.

22. Centrally acting atropine-like agents produce a variety of effects. Small doses cause diminished alertness, drowsiness, blurred vision, mydriasis, dry mouth and an increase in heart rate. Higher doses cause ataxia, delusions, hallucinations, random unpredictable behaviour and in inability to respond to the environment. Decreased salivation and bronchial secretions occur. Gastric stasis and constipation is found. Micturation may be inhibited.

23. Although these compounds are metabolized fairly rapidly, they bind strongly to muscarinic receptors and may therefore have a prolonged action.

24. Dehydration makes casualties susceptible to heat stress. Many of the symptoms mentioned above are also observed in casualties with severe heat stress. Weakness, lethargy and apathy may be found and casualties may feel nauseated. The mouth becomes dry and casualties may feel thirsty. The core temperature rises. In severe cases of heat stress, a stroke may occur.

IV. MUNITIONS ASPECTS

25. There was an explosion above the troops. Possible causes for this explosion include an exploding artillery or mortar shell, or a rocket self-destructing above the troops. A self-destructing rocket would not be expected to carry a chemical agent. Artillery and mortar shells can be either chemical or conventional.

26. To position a single explosion from a heavy artillery gun reliably over the troops would take considerable preparations and organization. A mortar could position an explosion more easily, but could carry a chemical fill of only a few kilograms of agent.

27. The use of a single artillery round or mortar shell is unusual in either conventional or chemical attack. More usually, a salvo of several rounds would be fired over a short period. No follow-up attack occurred after the single explosion, despite the considerable disorganization which resulted.

V. SITE VISIT

28. Two members of the team, accompanied by two members of a team from the United Kingdom, visited the area of the attack. The site was identified to them by two soldiers who said they had been present during the attack. The site visited was further south than anticipated. Its location was recorded as 24°53.55 S-32°02.80'E (World Geodetic Survey 1984) using the Global Positioning System, a device not available to the accompanying troops.

29. Transport to the site was by helicopter and armoured vehicle, with the last few hundred metres being completed on foot.

30. Soil and vegetation samples were taken from the area for subsequent analysis.

31. Owing to reports of enemy activity in the area at the time the samples were collected, only a limited time could be spent at the site.

VI. DISCUSSION

32. The signs and symptoms of the casualties are consistent with the use of an atropine-like chemical warfare agent, but are also consistent with severe heat stress. The use of an atropine-like agent does not remove the possibility of heat stress; rather, it increases an individual's susceptibility to it.

33. The previous description of possible munitions types shows that it is improbable that a chemical attack would be planned using a single round. However, it cannot be excluded that the limited quantity of agent that could be delivered would have had an effect which could have been exacerbated by local climatic conditions and limited water supply.

VII. CONCLUSIONS

34. An attack against Mozambique government forces is reported to have occurred on 16 January 1992 in the Ngungue region of Mozambique, close to the South African border.

35. The effect on the troops was consistent with the use of an atropine-like chemical warfare agent and also with severe heat stress.

36. In the current absence of analytical data, we cannot conclude that a chemical warfare agent was used in the attack.

37. A considerable delay occurred between the attack and the investigation being mounted. For this reason, it may not be possible to detect traces of agent if a chemical warfare agent had been used in the attack.

Appendix I

Chronology of activities

Sunday, 22 March 1992

Mission assembles in Lisbon (except Dr. Thompson)

Monday, 23 March 1992

Departure from Lisbon

Arrival in Maputo, Mozambique

Tuesday, 24 March 1992

Meeting and briefing in Ministry of Foreign Affairs

Meeting with the Commander of the Armed Forces at the headquarters, Army General Staff

Visit to the Military Hospital and a meeting with its Clinical Director

Dr. Thompson joins the mission

Wednesday, 25 March 1992

Meeting with the Vice-Minister of Health

Interviews with patients in the Military Hospital

Thursday, 26 March 1992

Examination of, and interviews with, patients in the Military Hospital

Meeting with the South African Trade Representative

Meeting with the Vice-Minister of Health

Friday, 27 March 1992

Visit to the site of incident in the Ngungue region

Briefing by a South African doctor

Meeting with the Foreign Minister of Mozambique

Departure from Maputo

Saturday, 28 March 1992

Arrival in Geneva

Sunday 29 March 1992

Preparation of report by experts

Monday, 30 March 1992

Preparation of report by experts

Tuesday, 31 March 1992

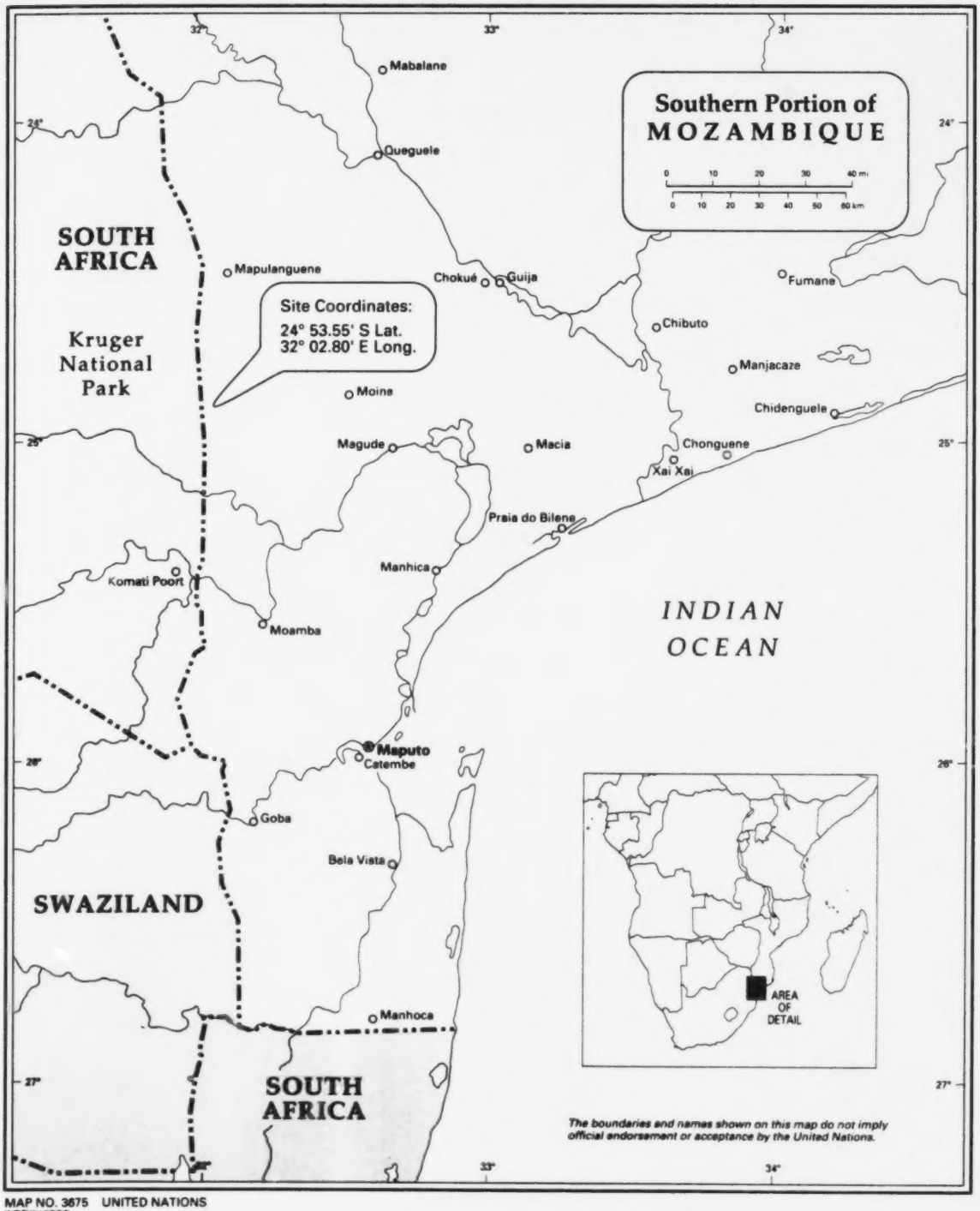
Finalization of report by experts

Wednesday, 1 April 1992

Mission disperses from Geneva

Appendix II

Map of southern Mozambique



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Appendix III

Analysis of alleged chemical weapon samples from Mozambique

FOA ABC-SKYDD
National Defence Research Institute
Department of NBC Defence
Division of Chemistry*

28 April 1992

Sample description

The samples were received at FOA on 1 April 1992. They were stored in a refrigerator at +6°C before work-up and analysis.

In addition two samples of combat clothing, reported to be from the cadavers of Eusebio Carlos and Joao Fabiao Cossa, together with two control samples were received on 11 March 1992.

The type of samples received together with their code numbers are listed in table 1.

Sample preparation

About half of each sample was used for extraction. The samples were extracted with methanol/water (3:1) for 5 minutes in an ultrasonic bath. The vegetation samples were cut into small pieces before extraction.

The extracts from soil samples were recovered after centrifugation for 5 minutes at 2,000 rpm. All extracts were evaporated to dryness in a rotatory evaporator and the residue was dissolved in 0.5 ml acetone for analysis.

Analytical methods

All extracts were screened with GC-NPD with BZ as a reference. The samples which gave a signal at approximately the same retention time as BZ were also analysed by GC-MS.

The combat clothing samples were also analysed for the presence of zinc and phosphorous. The amount of zinc was determined with atomic adsorption spectroscopy and phosphorous was determined by a spectrophotometric method.

Instrumental conditions

Gas chromatography: An HP 5880 equipped with an NPD was used. The column was a 10 m x 0.2 mm HP-1 0.30 µm. The samples were injected at 50°C and the column temperature programmed after a 1 minute initial period at

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* Headed by Dr. Gustav Andersson.

20°C/min. to 220°C and then 10°C/min. to 280°C with 2 minutes at the final temperature. Helium was used as the carrier gas at 30 cm/s. Injector temperature 220°C and detector temperature 280°C.

Gas chromatography/mass spectrometry: An HP 5890 interfaced to a Trio-1 was used. The column was a 28 m x 0.25 mm JW DB-1. The same temperature program as for GC-NPD was used. Electron ionization (70 eV) was used. Source temperature was 280°C, trap current was 250 μA. The scan range was 40-500 amu.

Results

No BZ was found in the samples. The detection limit (GC-NPD) was between 0.08-0.3 μg/g sample, depending on samples amount extracted.

The amount of zinc and phosphorous found in the combat clothing samples is low and does not differ significantly from the amount found in the controls (see table 2).

Dr. Sven-Ake PERSSON
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Division of Chemistry

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Table 1. *Samples listed by code number and sample type*

Sample	Type
049(B)	Military material
050(A)	Soil
050(B)	Soil
051(A)	Military material
051(B)	Military material
052(A)	Soil
052(B)	Soil
053(A)	Vegetation
053(B)	Vegetation
054(A)	Vegetation
054(B)	Soil
055(A)	Soil
056(A)	Soil
056(B)	Soil
057(A)	Soil
057(B)	Soil
058(A)	Soil
058(B)	Vegetation
059(B)	Soil
062(A)	Soil
063(B)	Soil
1. Eusebio Carlos 94/92	combat clothing
100/92	combat clothing (control)
2. Joao Fabiao Cossa 92/92	combat clothing
100/92	combat clothing (control)

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Table 2. Results of analyses for zinc and phosphorous in combat clothing

Sample	Zinc mg/kg	Phosphorous %
1. Eusebio Carlos 94/92	75	0.02
100/92 control	16	<0.01
2. Joao Fabiao Cossa 92/92	31	0.02
100/92 control	8.5	<0.01

Appendix IV

Off-site analysis of samples acquired during United Nations mission to Mozambique (23-27 March 1992)

NC-Laboratory Spiez 6 May 1992

Abstract

We received 22 samples which were analysed. Fifteen of them were soil samples, 4 were vegetation, 2 were slings from rifles and 1 was a wooden rifle furniture. All samples were analysed on the presence of BZ and typical degradation products by means of GC/MS. The detection limit for these compounds was approximately 0.1-0.5 ppm. Above these limits, none of the suspected substances could be detected in any of the samples.

Analysis of the various samples

General

The samples were received on 1 April 1992. They arrived in good condition without any sign of transport damage. They were stored in a freezer at 4°C.

Instrumentation

The analytical instrumentation consisted of a Hewlett-Packard 5890 II gaschromatograph coupled with a Hewlett-Packard 5971 mass selective detector. Capillary column GC/MS analyses were also performed with a Hewlett-Packard 5988A system.

Soil samples: 052(A), 052(B), 054(B), 055(A), 056(A), 056(B), 057(A), 057(B), 058(A), 059(B), 061(A)

050(A), 050(B), 062(A), 062(B) (control samples)

Characterization: Brown soil (15 - 50g)

Preparation: For each sample, 10g of soil were extracted with 10 ml of dichloromethane containing 1 per cent of triethylamine using sonication for 15 minutes. The extract was filtered through a membrane filter.

Analytical: The extracts were analysed specifically on the presence of BZ and typical degradation products (benzophenone, quinuclidin-3-ol) by means of GC/MS using selected ion monitoring conditions (m/z 105, 127, 182, 183, 337). GC/MS measurements in scan mode were performed over the mass range m/z 40-500.

Result: BZ and the typical degradation products could not be detected in any of the samples.

Samples of vegetation: 053(A), 053(B), 054(A), 058(B)

Characterization: Green or brownish-green leaves of different trees or shrubs, (2-3g).

Preparation: 1 to 1.5g of the samples were extracted with 5 ml of dichloromethane containing 1 per cent of triethylamine using sonication for 15 minutes. The extract was filtered through a membrane filter.

Analytical: Same analytical procedure as described for soil samples.

Result: BZ and the typical degradation products could not be detected in any of the samples.

Samples from rifles: 049(B), 051(A), slings from rifles
051(B), wooden rifle furniture

Characterization: Pieces of greyish-brown rifle slings (approx. 10g); piece of wooden stock (28g).

Preparation: 5g of each belt were extracted with 15 ml of dichloromethane containing 1 per cent of triethylamine using sonication for 15 minutes. The entire piece of wooden stock was extracted in the same way with 30 ml of solvent. The extracts were filtered through a membrane filter.

Analytical: Same analytical procedure as described for soil samples.

Result: BZ and the typical degradation products could not be detected in any of the samples.

Analytical details are available on request.

(Signed) Dr. A. NIEDERHAUSER
NC-Laboratory Spiez

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Appendix V

Analysis of samples from Mozambique by the Chemical and Biological Defence Establishment, Porton Down, United Kingdom

29 April 1992

Summary*

1. The United Kingdom was invited by Mozambique to send a team to carry out sampling at the site in the course of a United Nations investigation team visit to Mozambique from 24 to 27 March 1992. The present appendix describes the sampling procedures used and the analytical results obtained.

2. The 21 samples obtained were taken during a one-and-a-half-hour visit to the alleged site of the incident and consisted of 14 soil samples, 4 vegetation samples, 2 samples of military webbing and 1 sample of rifle stock. The samples were returned to the Chemical and Biological Defence Establishment, Porton Down, on Saturday, 28 March 1992, for sample division for analysis by the United Kingdom, Sweden and Switzerland.

3. The samples were screened for low levels (10^{-9}g) of 20 chemical weapon agents by gas chromatography/mass spectrometry (GC/MS) following three extraction procedures. The samples were also analysed by a more sensitive screen to detect trace levels (10^{-10}g) of three anticholinergic agents.

4. The 21 samples analysed by the GC/MS screening procedure did not contain the following chemical weapon agents: the nerve agents GA, FGA, GB, GD, GF, MeGF, VX and DFP; the vesicants H, HN1, HN2, HN3, T and PS; the irritants CS, CR, CN, BBC and KSK; the psychochemicals BZ and cyclopentyl-BZ at a detection level of 20-50 nanograms (2×10^{-8} to 5×10^{-8}g).

5. A more detailed analysis of the samples using the selective ion mode (SIM) confirmed that the 21 samples did not contain the anticholinergic compounds BZ or cyclopentyl-BZ or the volatile breakdown product of either BZ and cyclopentyl-BZ (quinuclidinol) or atropine (tropine) at a detection level of 200 picograms (2×10^{-10}g).

6. The soil and military webbing samples analysed contained various hydrocarbons, long-chain aldehydes and alcohols and methyl esters of fatty acids. The samples of vegetation and rifle furniture contained a large number of high molecular weight compounds, many of which were natural products.

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* The complete report is available upon request from the Office for Disarmament Affairs.

7. Although no trace was identified of any of the 20 chemical weapon agents screened, an insecticide was detected in a control soil sample taken in the gardens of the British Embassy in Maputo, the capital of Mozambique. This demonstrated that the analytical techniques used would have been capable of identifying any unusual material extracted from environmental samples or military matériel.

Dr. Graham S. PEARSON
Chemical and Biological
Defence Establishment

UNITED
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THE SITUATION IN CENTRAL AMERICA:
THREATS TO INTERNATIONAL PEACE
AND SECURITY AND PEACE INITIATIVES

SECURITY COUNCIL
Forty-seventh year

Note by the Secretary-General

The attached document contains the report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) for the period from 1 January to 30 April 1992. As will be recalled (see S/23999, para. 3), it was decided that ONUSAL's work in relation to the San José Agreement on Human Rights (A/44/971-S/21541, annex) would continue to be the subject of a separate series of reports.

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Annex

REPORT OF THE DIRECTOR OF THE HUMAN RIGHTS DIVISION

INTRODUCTION

1. This report covers the period from 1 January to 30 April 1992 and has been prepared in accordance with the mandate entrusted to the Human Rights Verification Mission by the San José Agreement (para. 14 (1)). The Peace Agreement signed on 16 January (A/46/864-S/23501) and the actual cessation of hostilities on 1 February brought about a major change in the activities of the ONUSAL Human Rights Division. Difficulties directly linked to the armed conflict have gradually disappeared. The cease-fire has been fully observed, and in principle no civilian or military casualties have been recorded, with the exception of the incidents that are being investigated, which are reported on in the chapter on cases and situations relating to international humanitarian law. Irregular recruitment, by either the Armed Forces or the Frente Farabundo Martí para la Liberación Nacional (FMLN), has gradually ceased. Freedom of movement, which was the subject of numerous complaints up until 16 January 1992, has been completely restored.

2. As a result of the new situation the number of complaints has declined, particularly in what were the conflict zones. a/ However, the overall picture still gives rise to concern: summary executions and violent deaths - above all in the Departments of San Salvador, La Libertad and Santa Ana - have continued after the cease-fire, and no effective action has been taken to put an end to them, investigate them or punish the perpetrators. Moreover, there has been a recurrence of the threats against certain non-governmental organizations (NGOs), trade unions, churches and political leaders; even though clandestine organized groups are still active, no measures are being taken to prevent them from carrying out their activities or to clarify the situation. Violations of the right to life, as well as death threats, were a fundamental cause for concern referred to by the Mission in its second and third reports (A/46/658-S/23222 and Corr.1 and A/46/876-S/23580), in which specific recommendations were made to the authorities, concerning both the incidents in question and the State's duty of prevention and investigation. Unfortunately, those recommendations have as yet not been heeded in the manner prescribed in the San José Agreement (para. 15 (d)). Another source of concern was that Maj. José Alfredo Jiménez Moreno escaped from the facilities of the new Military Police. This incident was reported on 7 April 1992, the day before he was sentenced to 30 years' imprisonment for abducting five prominent businessmen, and it was regarded as a sign of the continuing impunity of perpetrators and the complicity that makes such impunity possible, particularly in the military institutions. The Mission recently addressed a letter to the Ministry of Defence on this incident.

3. Forty-two individuals were released under the National Reconciliation Act of 23 January 1992, under which amnesty is granted to perpetrators of

political crimes and related ordinary offences and which is designed to facilitate the progressive reintegration of FMLN members into political and civilian life. That measure means that the provision of the San José Agreement on the release of individuals who have been imprisoned for political reasons (para. 3) is being implemented. Moreover, the Legislative Assembly has enacted two laws to ensure that citizens affected by the armed conflict are provided with identity documents, a step that is required in order to solve the serious problem of personal documentation as required by the San José Agreement (paras. 7 and 8).

4. Furthermore, the organic law on the Office of the National Counsel for the Defence of Human Rights was enacted on 20 February and the National Counsel was appointed on 27 February. The Counsel, who is to perform a very important role, was granted a budget far lower than that requested and has as yet been unable to start his activities. The National Council of the Judiciary Act, which according to the Peace Agreement was to be made public not later than 1 April 1992, has not yet been presented.

5. The Mexico Agreements of 27 April 1991, reaffirmed by the Peace Agreement of 16 January 1992, provide for a major reform of the judicial system, which has been adopted by the Legislative Assembly and has now been incorporated in the Constitution of the Republic. The judiciary receives an allocation from the State budget amounting to no less than 6 per cent of current income. The minimum eligibility requirements for Justice of the Peace are being changed, and it is now necessary to be a counsel of the Republic and of established competence to qualify. A career judicial service has been set up, and there is now a new method of appointing judges to the Supreme Court of Justice. Judges of the Courts of Second Instance and of the Courts of First Instance and Justices of the Peace, who are now integrated into the career judicial service, will enjoy stability and independence in performing their duties. Magistrates or Judges cannot serve as lawyers or as officials of other State organs. Important functions have been assigned to the National Council of the Judiciary.

6. The Attorney-General of the Republic has been given new powers: to conduct the investigation of crimes, through a body whose attributes are to be prescribed by law, without prejudice to the independence of judges in investigating the facts. A change has also been made in military jurisdiction: the special military courts no longer can exercise jurisdiction in the event of a state of emergency. Military courts will now be confined to trying crimes and minor offences committed while on duty of a purely military nature perpetrated by members of the Armed Forces in active service.

7. On 17 March 1992 at the Court of First Instance at Chinameca, Department of San Miguel, the Mission witnessed the handing over of two FMLN combatants allegedly implicated in the death of the two United States advisers David Pickett and Earnest Dawson in January 1991. ONUSAL will follow this trial closely. With regard to the case concerning the El Mozote incidents, the reader is referred to the relevant comments made in the third report,

particularly those concerning the need to examine skeletal remains using appropriate anthropological techniques, and the desirability of calling in international experts in the field to assist in the investigations.

8. This report will concentrate chiefly on two topics. Firstly, it will deal with the right to life and to integrity and security of person (San José Agreement, para. 11), with special reference to the investigation of deaths due to other than natural causes. It will then consider the issue of due process of law (San José Agreement, paras. 11 and 14 (h)), in order to identify crucial issues relating to the administration of criminal justice regarded as being of high priority as a result of the verification activities carried out by the Mission. The two topics are interrelated, since criminal investigations, even at the pre-trial stage, are closely linked to criminal procedure. Those questions will be given special treatment because this report is an introduction to one of the Mission's priority tasks at the next stage, namely, to "help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law" (San José Agreement, para. 14 (h)). This report will also deal with the issue of identity documents (San José Agreement, paras. 7 and 8) and with cases and situations relating to humanitarian international law now that the armed conflict has ceased.

I. CASES RELATING TO HUMAN RIGHTS

A. Right to life and to integrity and security of person

1. Summary executions or deaths in violation of juridical guarantees

9. The following case is a particularly good example of the violations of the right to life that have been committed during the period covered by this report.

10. No. ORSS/1008. Nazario de Jesús Gracias, trade-unionist, age 34, residing at the headquarters of the FEASIES trade union in San Salvador. The victim was employed as a watchman in the union building, where he was found dead at 8 a.m. on 2 March 1992. The body exhibited multiple wounds to the head, neck, forearms and hands inflicted with a knife-like weapon. The apartment - including the walls - was covered with blood. The manner in which the body was found indicates that the victim was first bound and blindfolded and subsequently killed with a machete. The total and partial amputation of fingers from the right hand and wounds to the forearms suggest that he attempted to defend himself.

11. The incident created a stir because of its viciousness and its similarity to other crimes which, though as yet unpunished, have been attributed to organized groups judging from the manner in which they were committed. Once again, the preliminary measures taken were entirely inadequate. Many people

entered the room in which the body was found. ONUSAL arrived at the scene before the duty magistrate and learned that no photographs had been taken and that no diagram of the scene had been made. The magistrate, who declined to call the police or await the arrival of police observers from the Mission, did not carry out the thorough examination of the body prescribed by law and left before the police arrived without having the area around the body sealed off. At approximately 6 p.m., as it was growing dark, a Commission from the National Police arrived at the scene of the crime to take fingerprints.

12. Nazario de Jesús Gracias had been captured on 21 October 1991 by the First Infantry Brigade in downtown San Salvador, turned over to the National Police on charges of "conspiracy to subvert" and released after three days. The Mission archives include case No. ORSS/332, under the heading "illegal detention and threats", in which Gracias accused the First Brigade and the National Police of making threats on his life. At that time, Gracias was released after ONUSAL intervened directly with the National Police. Upon his release, Gracias made statements to the press and, apparently, later received telephoned death threats on three occasions.

13. Witnesses from the union headquarters and neighbours state that many former National Guardsmen were present in the vicinity of the murder site in the days leading up to the crime and during the night on which it was committed. On 3 March 1992, FEASIES informed ONUSAL that it was holding an individual named Ulises Jiménez Tobar. This person had been caught by union members photographing people in front of the union headquarters. ONUSAL subsequently learned that union members found in Jiménez s possession a Browning pistol with the identification number scratched off and a card from the Ministry of Defence dated 1 November 1991 identifying him as a "worker under the command of the Territorial Service of the Armed Forces" and authorizing him to bear arms. ONUSAL received a copy of a document which recorded Jiménez's release into the custody of his lawyer and his threats to union members who, he said, would meet the same fate as Nazario de Jesús Gracias.

14. Following an initial interview by ONUSAL with the mother-in-law of Gracias, who lives in the Department of Usulután, four strangers came to the house and made threats. The wife of Gracias confirmed that her husband had been threatened while under arrest in October 1991 and said that he had received an anonymous telephone call at FEASIES three days before his death warning him that he would be killed. The case was assigned to the Court of First Instance on 23 March 1992, or 21 days after it was opened, in contravention of various legal practices.

15. During the period covered by this report, the Mission determined that procedural norms had been violated in one way or another in the following cases. In case No. ORSV/417, concerning the death of Santiago de Jesús Amaya Bermúdez, no security body appeared on the scene after the body was discovered. In case No. ORSM/299, concerning the death of Rómulo Adán Escobar, the court took no action on the motions made by the prosecutors

assigned to the case. In case No. ORSS/815, concerning the murder of José Marino Campos Mos, after the body was identified by the justice of the peace, the Criminal Court of First Instance took virtually no action.

16. Justices of the peace often use persons with no specialized training as their experts, which hampers a thorough investigation. In the case corresponding to charge No. ORSV/417, concerning the death of Santiago de Jesús Amaya, the judge, for purposes of examining the body, appointed as experts a journalist and a professor, who claimed that the victim had received two wounds from a .38 calibre firearm. The autopsy, ordered some two weeks later, established that the body contained five bullet wounds. In case No. ORSV/355, concerning the death of Manuel Antonio Lara Cerón, the judge had the body examined the day after the death was certified. No qualified persons were present; the experts were a mason and a merchant. No autopsy was subsequently ordered in this case. Nor were autopsies carried out in the following cases: No. ORSS/848, concerning the death of Francisca Chávez Gonzales; No. ORSA/453, concerning the death of Pedro Luis Medrano Pérez; No. ORSA/505, concerning the death of José Luis Vallejos Urrutia; and No. ORSS/815, concerning the death of José Marino Campos Mos.

17. Failure to follow established procedures in the preliminary investigation of deaths due to unnatural causes is a widespread practice on the part of both the judiciary and the police. Yet the law requires that the police inform a judge immediately of offences against life or integrity of person or any other offence that may cause serious social unrest. The judge of the court of first instance must investigate personally cases falling within the last category. Justices of the peace perform many of the formalities which are vital to such investigations. This generally happens with initial steps when they are carried out outside the court of first instance. Justices of the peace must inform the court of first instance of those measures within 12 days, even though they always have the authority to carry them out themselves. Many justices of the peace and even judges of courts of first instance act with gross negligence in securing the scene of the crime, obtaining evidence, taking fingerprints, issuing arrest warrants, interrogating witnesses, having the bodies examined by experts or conducting autopsies. The existence of functioning forensic medical institutes at Santa Ana, San Vicente, San Miguel and Usulután, in addition to the one in San Salvador, makes it inexcusable not to order autopsies. Cooperation between judges and investigating authorities is also of the utmost importance.

18. Another frequent occurrence is the failure of staff from the Office of the Attorney-General of the Republic to fulfil their legal obligations in investigating offences. It would be premature, however, to assess their efforts during the period following the most recent constitutional reform, which became effective on 30 November 1991 and gives these individuals new responsibilities (para. 6). The Office of the Attorney-General has begun round-the-clock work programmes and is supervising the installation of new prosecutors' offices.

II. SITUATIONS AFFECTING HUMAN RIGHTS

A. Right to due process of law

19. The Code of Criminal Procedure has been in force since 1974, although it was drawn up in response to much earlier ideas. It sets out a distinctly inquisitorial procedure, although the procedures of trial by jury and public hearings have been introduced for trying certain offences. It is thus a hybrid text in which recent reforms have sought to incorporate certain guarantees into the instrument without modifying it substantially.

1. Extrajudicial confessions

20. Extrajudicial confessions are often a fundamental requirement for pre-trial detention. However, the Code of Penal Procedure ascribes no probatory value to extrajudicial confessions in the case of political crimes. This is due to the widespread conviction among the legal community and society in general that extrajudicial statements are often obtained by means of violence or coercion. The Commission for the Revision of Salvaldorian Legislation (CORELESAL), established in 1984 by the Government of El Salvador to suggest ways of reforming the criminal laws, said that extrajudicial statements "... are most frequently obtained in auxiliary bodies through violence or intimidation ...". b/ The Mission has ascertained that such practices exist and included specific examples thereof in its second report. These situations continue to occur, as demonstrated by recent cases involving the National Police (Nos. ORSV/564 and ORSV/567). However, the Constitution of the Republic (art. 12, para. 3) establishes as a general rule that statements obtained against an individual's will are invalid. This principle is consistent with the provision in the American Convention on Human Rights (art. 8, para. 3), that "a confession of guilt by the accused shall be valid only if it is made without coercion of any kind".

21. In common crimes, extrajudicial confessions are considered to be sufficient evidence if they meet certain requirements. For example, when such confessions are made before an auxiliary body, two witnesses, most often members of the bodies in question, must testify that the accused was not acting under duress. In addition to extrajudicial confessions heard by auxiliary bodies, the Code provides for confessions to be made to two witnesses, even when the two confessions are made at different times and in different places.

22. Within the Ministry of Justice, a unit called Technical Support for Judicial Reform (ATJ), which has been in operation since June 1991, is drafting bills, particularly in the areas of criminal legislation and criminal procedure to bring legislation into line with the guarantees of due process of law. c/ The Ministry bills that were put to a referendum in March 1992 included one on the elimination of extrajudicial confessions. This bill, like others which have appeared thus far, are a positive development in the effort

to modernize the country's legislation on the basis of guarantees and is consistent with some of the most advanced thinking in this field.

2. Administrative detention

23. The auxiliary bodies can detain an accused person for 72 hours, after which they must hand him over to the judge having jurisdiction. During this period, referred to as "administrative detention", the above-mentioned extrajudicial statement is usually given. The Code of Criminal Procedure currently in force became effective on 15 June 1974; its article 143 provided, in accordance with a long-standing legislative tradition in the country, that administrative detention must not exceed 24 hours. In 1977, a subsequent reform established the 72-hour period currently in force. The Mission has noted that it is a common police practice to utilize the maximum period of administrative detention (72 hours), a practice which should be followed only when warranted by the seriousness of the crime and the difficulty of the investigation. It has also noted that the National Police sometimes exceed the maximum period of 72 hours (case No. ORSS/1345).

24. The right of a detained person or prisoner to be brought "without delay" before a judge or an official authorized by law to exercise judicial functions is embodied in the international human rights treaties ratified by El Salvador. d/ Prolonged administrative detention can violate this right. Furthermore, if confessions obtained while in police custody are to be inadmissible, as envisaged by the legislative reforms under way, it would appear logical to shorten the maximum period of administrative detention. A preliminary draft proposal prepared by ATJ, which is consistent with the anticipated elimination of the above-mentioned extrajudicial statement, specifically proposes to limit administrative detention to 24 hours, renewable only by a reasoned decision of a judge having jurisdiction, for a maximum of 48 hours.

3. Incommunicado detention

25. Incommunicado detention is not provided for either in the Constitution or in the laws on criminal procedure. The right of detained persons to communicate with others derives from the basic law which provides for communication with a defence lawyer from the beginning of the investigation (Constitution, art. 12). This right is likewise embodied in the international treaties ratified by El Salvador. d/ The San José Agreement (para. 2 (e)) expressly provided that no detainee would be held incommunicado. e/ However, as the Mission noted on repeated occasions, incommunicado detention appeared to be a de facto practice of many authorities which made arrests, whether or not they were empowered by law to do so.

4. The right to legal counsel

26. The exercise of this right, which is enshrined in the internal and international legal order and in the San José Agreement (para. 2 (e)), is to a large extent limited by socio-economic factors, legislative gaps which the country is attempting to fill and persisting institutional flaws. A large proportion of prisoners lack the economic resources with which to obtain reliable legal counsel. Systematic visits to penitentiaries, penal centres and houses of detention by observers from all of the Mission offices have enabled them to assess the status of the right to legal counsel in practice. It is clear from conversations with prisoners that many who have been incarcerated for more than four or five years have never seen a lawyer. Furthermore, the majority of prisoners interviewed on one occasion in the country's main penitentiary were unaware of their right to select a defence lawyer at the start of the proceedings. The Mission has noted that even prisoners who have a private defence lawyer rarely see him. Administrative transfers of detainees, without notice to judges and lawyers, make the exercise of the right to legal counsel even more difficult.

27. The situation is still worse where accused persons have only a court-appointed lawyer, or must rely for legal assistance on the Office of the Chief State Counsel. Indeed, whether owing to a lack of resources or a sufficient number of lawyers, or to self-imposed restrictions without much legal basis (such as the refusal to defend recidivists), that institution is far from able to solve the problem of the lack of legal counsel for criminal defendants. ONUSAL has conducted a special investigation into the functioning of the Office of the Chief State Counsel in cases involving military and common crimes in areas outside the country's central region, encompassing the Departments of La Paz, San Vicente and Cabañas. Through the follow-up of a representative number of cases, it had been possible to establish, together with the need for greater professionalism on the part of staff members of the Office of the Chief State Counsel, the desirability of adopting an integrated approach to the problems of the right to legal counsel, which should include the strengthening of the Judicial Branch.

28. The prison population is mostly illiterate or semi-literate; inmates are not informed of their rights and obligations, either by judges or upon entering a detention centre and, in general, lack minimum information on the status of their case. The Mission has noted that accused persons are very rarely notified of judicial decisions; in general, they are informed only of the final sentence, and then the information sometimes is vary late.

29. With a view to improving the exercise of the right to legal counsel, the Legislative Assembly recently adopted a draft law on legal assistance and public defenders, originating with the Ministry of Justice. According to this law, every accused person has the right to be defended immediately, from the beginning of the extrajudicial proceedings or the trial, by legal counsel selected by him or designated by his next of kin or, in the absence thereof, by a court-appointed lawyer. What is innovative about this is the reform

which establishes the defence lawyer's powers during police investigations, an aspect not governed by the Code of Criminal Procedure currently in force. Another innovative aspect of the law is that the presence of a defence lawyer during non-jury trials is made mandatory rather than optional, which is consistent with the notion that all trials should have an adversarial nature.

5. Pre-trial detention, bail and delayed administration of justice

30. A judge of first instance, as well as a justice of the peace, can order an accused person to be detained for the purposes of taking a deposition; the accused can then be held for 72 hours. Within this period, the court having jurisdiction must either order the accused to be released or order him to be held pending trial. Even this rule has exceptions in practice. In one case (ORSS/872), an accused person had not yet made a statement 10 days after his arrest. In another case (OSRU/0296), an accused person detained on the order of a judge of first instance was held for up to 70 days in a National Police interrogation centre, which is not an official place of detention. While the present report will not deal with specific aspects relating to conditions of detention or imprisonment, the case constitutes a flagrant irregularity in the rules of pre-trial detention. The criteria for ordering preventive detention are twofold: there must be sufficient proof that a crime has been committed, and sufficient evidence to suggest that the accused participated in the commission of same, although in a number of crimes, the second criterion suffices.

31. Once pre-trial detention has been ordered, the possibilities of obtaining bail are meagre. Bail is warranted only where the crime is punishable by a fine or a maximum sentence of three years' imprisonment. Nearly all crimes of any significance exceed that scale of penalties. For example, theft is punishable by one to five years' imprisonment where the value of the stolen item is greater than 20 colones (US$ 2.50). Moreover, bail is restricted by numerous exceptions. As a result, bail becomes so difficult to obtain that pre-trial detention ceases to be a way of ensuring the presence of the accused and becomes, in many cases, a form of advance penal servitude, notwithstanding the principle of presumption of innocence. This is reflected in the make-up of the prison population, in which there is an extremely high ratio of accused to convicted persons. This phenomenon is frequently accompanied by a prolonged delay in the administration of justice.

32. According to recent data (see appendix), there were a total of 5,286 prisoners in the penitentiaries and penal centres in the country, of whom 4,755 were awaiting trial and 531 were serving sentences; that amounts to 89.95 per cent awaiting trial and 10.05 per cent serving sentences. In El Salvador, as in many countries, the time-limits for instituting proceedings and conducting a trial are not adhered to. Under the law, the judge must complete the investigation within no more than 120 days; although in itself that is a reasonable period of time, in many cases it is not observed. The greatest delays seem to occur in the most densely populated departments,

including San Salvador and the adjoining areas, and Santa Ana and San Miguel. According to certain estimates it takes more than two and a half years, on average, to try a criminal case. During a visit to one prison the Mission was informed that one of the prisoners, who had been arrested on suspicion of stealing, had been awaiting trial for four years. On another occasion, ONUSAL was told about the case of one person who had been arrested on 25 March 1983 and sentenced by the court of first instance to 16 years in prison for murder, which sentence had not yet been confirmed by the Chamber of Second Instance. It is estimated that the number of prisoners awaiting sentencing continues to increase slightly each year.

33. Offences punishable by not more than three years in prison and those punishable by fines are handled by summary proceedings in the courts of first instance. With certain exceptions, including those involving abduction, extortion, rape, theft, robbery, swindling and drug and narcotics-related offences, cases are dealt with by jury panels. Moreover, pursuant to a recent reform, the panels for the more serious offences have been concentrated in the largest cities and judicial districts. Whereas, in the recent past these panels were often not formed, which in many cases resulted in a postponement of the public hearing, now this no longer happens. f/ Last year there were 1,532 final sentences handed down of which 787 were convictions and 745 were acquittals; this does not appear to be sufficient to eliminate the delays in the administration of justice. The pace has not been any faster during the first two months of this year indicating that the problem of delayed justice still persists. g/

34. To a large extent, overcoming the delays is a matter of human and material resources. The Mission has been able to ascertain the magnitude of the needs in the country, not only in terms of the number of judges and court personnel, but also in terms of training of many of the staff involved with the administration of justice and of the physical infrastructure they can utilize. The delays in the penal system prompted the Legislative Assembly to adopt an Emergency Act to resolve the problem of Unconvicted Prisoners (Decree No. 769 of 25 April 1991), effective for one year as from 29 May 1991. Under this Act, prisoners who have been awaiting sentencing for longer than the period allowed by law must be released. As of the writing of this report, 448 individuals had been released under this Act, less than 10 per cent of the total prison population. This initiative was intended to resolve not only the problems concerning the delays in the courts but also those arising from prison overcrowding. The modest results resulting from implementation of the Act demonstrate that the measure did not produce the desired effects.

35. The Supreme Court of Justice decreed that an official known as the "Inspector of Prisons" should act as a liaison between the judicial organ and the prisoners. Although one of his functions is to monitor the progress of the proceedings and to report any shortcomings he may find to the judges, the initiative does not seem to have speeded up the proceedings to any significant degree. Nevertheless, the intervention of these officials has made it possible to avoid a number of abuses.

36. The delays in the Courts violate the provisions of the international human rights treaties ratified by El Salvador at least in three respects: the right of every person arrested on criminal charges to be tried promptly or released, the right of every person charged with an offence to be tried without delay and the exceptional nature of pre-trial detention. h/ With respect to the latter, the present understanding is that pre-trial detention must not be used to achieve ends which legitimately fall within the framework of criminal penalties. It is not intended to in effect become a prison sentence but to make sure, in specific cases, that the accused is not able to elude justice or to impede the progress of the investigation. i/

37. One point worth bearing in mind is the final document of the research programme of the Inter-American Institute of Human Rights on penal systems and human rights in Latin America. This document proposed that pre-trial detention that continues for more than two years without the accused or the defence having arbitrarily impeded the progress of the proceedings, should be deemed a violation of human rights and should not be permitted in any country in the region. It also suggested establishing in the constitutions that the maximum period for pre-trial detention may not exceed four months, save when the accused or the defence have arbitrarily impeded the progress of the proceedings. It was also proposed that no one should be held pending trial for the maximum period currently allowed, if that would be more than half the length of time which the accused might have to serve were he to be convicted. j/

38. With respect to the delay in the administration of justice, as with other aspects of criminal proceedings and criminal investigation outlined in this report, the Mission has been able to ascertain that its interventions with the judicial organ - whether with the justices of the peace or the courts of first instance - have had a positive effect in many cases. Nevertheless, on the whole this has been confined to cases raised by ONUSAL observers and it has not had a similar effect on the treatment of other cases, nor has it produced an overall improvement in judicial practice. As will be pointed out in the conclusions, judicial reform involves resolving structural problems. In the belief that it would be desirable to consider, step by step, a series of systematic changes, the Mission has formulated the recommendations contained in the relevant chapter concerning various critical aspects of the criminal justice system.

B. Identity documents

39. ONUSAL has given priority attention to the issue of identity documents for displaced persons and returnees and all persons in the areas involved in conflict (San José Agreement, paras. 7 and 8) and has made recommendations on this issue in its two previous reports. The two legislative decrees designed to deal with the situation of persons who have no documents have entered into force. One of them consists of a series of reforms to the act on the Replacement of Registers and Entries in the Civil Registry k/ to facilitate

the replacement of those registers which were damaged in the past and replacement of all kinds of certificates including birth certificates. The other, a special transitional measure for establishing the civil status of persons affected by the conflict having no Documents - which is in effect for one year as from 24 March 1992 - facilitates the registration of any person whose birth has not been registered for reasons relating to the internal conflict, including minors born abroad. The Mission applauds the promulgation of these measures and the good will demonstrated by many mayors in tackling the problem of persons having no documents and it hopes that the question relating to the implementation of the new rules will be resolved speedily and effectively.

III. CASES AND SITUATIONS RELATING TO INTERNATIONAL HUMANITARIAN LAW

40. In section III of its first report the Mission stated the limits within which it would verify cases and situations involving international humanitarian law as part of the mandate conferred by the San José Agreement. The Cessation of the Armed Conflict went into effect on 1 February 1992 and will be completed on 31 October 1992 pursuant to the Peace Agreement of 16 January 1992. This report covers that period. One element of the Cessation of the Armed Conflict is the end of the military structure of FMLN and the reintegration of its members, within a framework of full legality, into the civil, political and institutional life of the country. International humanitarian law includes norms that also apply to the cessation of hostilities. 1/ Although the situation established in the Peace Agreement could not be specifically provided for in the applicable treaty provisions, it is the Mission's understanding that the protection granted by international humanitarian law remains in effect throughout the entire period of the Cessation of the Armed Conflict. In the light of these considerations it will continue to consider the issue during that period.

41. As may be seen from the statistics contained in the appendix, the Mission has continued to receive reports of violations of international humanitarian law during the period covered by this report. Complaints against the Armed Forces on those grounds fell drastically during the month of January and were almost non-existent in February and March. That was not the case with respect to FMLN: communications concerning violations by FMLN of international humanitarian law continued to be received as did reports of abductions. Although ONUSAL has discounted a number of these reports, considering them false or inadmissible, it has also been able to ascertain that in certain cases there have been violations attributable to FMLN. That has been true in case No. SORU/293 involving José Avalos, who was held for nine hours on 30 March 1992. Shortly thereafter, on 7 April 1992, Avalos was murdered by a group of persons unknown. According to the preliminary investigations conducted by ONUSAL this would seem to have been an ordinary crime, which the Mission will continue to investigate. The Mission has been able to verify other cases of persons who were held by FMLN for varying periods of time when

checking into the complaints made in case Nos. SORU/279 and SORU/290. In response to other complaints, FMLN informed ONUSAL that they were voluntary recruitments. However, the Mission continues to investigate some of these complaints when the FMLN replies are not entirely satisfactory.

42. Although there have been almost no reports of attacks on life in relation to international humanitarian law, the Mission continues to monitor closely the evolution of this phenomenon, particularly since the start of the Cessation of the Armed Conflict. Accordingly, case No. ORSM/537 concerning the death of Carlos Nuñez Membreno, which is being investigated by the relevant regional office, is particularly disturbing. Because of its significance, the Director of the Division of Human Rights also referred the case to FMLN, requesting exhaustive information on the case.

43. During this period there have been a great many complaints against FMLN regarding violations of the rules protecting the civilian population. A substantial portion of these communications are for the month of January and refer to acts or threats of violence, many of them relating to the so-called war tax. Although the number of these complaints declined in February and March they have not stopped entirely. When these communications were referred to FMLN, it denied all responsibility. The Mission continues to give full attention to these cases.

IV. CONCLUSIONS

44. The problems of the criminal justice system have many causes, some inherent in its structure and others resulting from the past and linked, in particular, to the internal armed conflict in El Salvador. An example of the latter is the large number of judges, known as "judges in exile", who have not been able to perform their functions in conflict zones, in nine of the 14 Departments of El Salvador. It is clear that the criminal justice system as a whole should be completely overhauled as part of a broader reform of the administration of justice, its auxiliary bodies, the Chief State Counsel's office and the function of defence lawyers. This process may be prepared through gradual reforms which, although partial, must be systematic, and which depend, for their success, on consensus and social participation. The initiatives developed in this respect in the Ministry of Justice are positive and should be encouraged as necessary steps towards far-reaching reform of the judicial system and, in particular, of the criminal justice system. In this context, all the social sectors have a specific role to play, but some are pivotal for the process of change. That is the case of the mass communications media, which to a large extent can promote or fail to promote the process of criminal justice reforms during the transitional stage.

45. The problems discussed in this report represent challenges which require not only legislative solutions, but political and institutional responses, not only from the State but from the citizenry as a whole. The flaws in the judicial system, demonstrated chiefly by its inability to investigate violent

deaths, the selectivity of the criminal justice system and delays in sentencing, cannot be remedied without basic reforms which must be made sooner or later and require painstaking campaigns of discussion and explanation. Only then will it be time to cope with structural defects, such as those which now exist. One example of those defects, organic in nature, is that the examining magistrate who investigates the facts of the case is at the same time the presiding judge who directs the proceedings and passes sentence. There will be no basic solution unless the independence and impartiality of the judiciary is upheld, and there is an increase in the number of judges, as well as an improvement in their training and of the human and material resources that support their work. In this respect, the Agreement on Peace and Constitutional Reform referred to earlier has laid the basis for the necessary changes. Education concerning the law and the legal system is an important factor in creating an awareness of the urgent need for the changes required in the existing criminal justice system. In order to strengthen this aspect of the protection and promotion of human rights, the Mission will make specific recommendations in this first report in which it has considered in more detail the problems of due process of law, in fulfilment of the mandate conferred on it by the San José Agreement (paras. 11 and 14 (h)).

V. RECOMMENDATIONS

46. In this section the Mission makes recommendations to the parties based on the conclusions drawn from the cases or situations it has reviewed (San José Agreement, para. 14 (g)). The parties have undertaken to give their earliest consideration to any recommendations made to them by the Mission (San José Agreement, para. 15 (d)).

A. Right to life and to security and integrity of person

Investigation of the facts

47. The Mission reiterates the recommendations contained in its second and third reports (para. 150 and paras. 154 and 155 respectively) and calls on the Government of El Salvador, the Office of the Attorney General of the Republic and the Judiciary to take decisive and firm measures for the prevention and investigation of violations of the right to life and to security and integrity of person. The National Police should be provided with the necessary material resources to carry out its functions and ensure that it maintains professional standards in carrying out proper investigations. Judges should use the powers of investigation accorded under the law and improve coordination with the National Police. Judges of the first instance should personally conduct the investigations in cases that have given rise to serious social unrest and in particular to encroachments on the right to life. The autonomy and independence of the Chief State Counsel's Office should be strengthened. Prosecutors should play an active role in initiating proceedings and investigating crimes, and the Attorney General of the Republic should use all

the powers available to him under the judicial system, including that of appointing special commissions (Constitution, art. 193 (7)), which could be done selectively to clear up relevant cases. m/ Prosecutors should take into account the United Nations Guidelines on the Role of Prosecutors and, in particular, those concerning prosecutors in criminal cases. Furthermore, a register of victims of deaths from other than natural causes could be established.

B. Right to due process of law

1. Extrajudicial confessions

48. Until a measure such as a draft law prohibiting extrajudicial confession is approved, the duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present should be recorded and legally certified. A detained or imprisoned person, or his counsel, must have access to that information in accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly in resolution 43/173 of 9 December 1988 (Principle 23). Furthermore, the principles invalidating statements made in an atmosphere of intimidation, or under any form of coercion, must be observed. In particular, acts of psychological coercion or classic coercion (torture and other cruel, inhuman or degrading treatment or punishment) during interrogation must be severely punished. In addition to the provisions of domestic law and of international treaties ratified by El Salvador, the recommendations contained in the Body of Principles cited above and of the Code of Conduct for Law Enforcement Officials should be taken into account.

2. Administrative detention

49. The police should hold accused persons in administrative detention for a maximum of 72 hours only where the gravity of the charge and the difficulties of the investigation make this strictly necessary. Under no circumstances should this period be exceeded. Courts should monitor the administrative detention of accused persons from the moment of their detention. Courts of first instance should undertake such monitoring in all cases in which the circumstances of the crime or the position of the accused or of the victims have provoked social unrest. Courts should exercise more rigorous supervision over places of administrative detention, through regular visits and inspection of the records. Also, through legislative reform such as that proposed in the bill prepared by the Ministry of Justice, efforts should be made to reduce the maximum period of administrative detention to a reasonable length.

3. Incommunicado detention

50. The commitment given in the San José Agreement concerning the prohibition of incommunicado detention must be scrupulously respected. There should be no derogation from this principle nor can it be modified by the application of disciplinary measures in prison or during pre-trial detention. Any person deprived of his freedom should therefore be allowed, from the very beginning of his detention, to communicate, especially with his family, relatives and counsel and with humanitarian organizations. In this connection, the Mission recommends that a study be undertaken of legislative reform that would explicitly incorporate this guarantee in the Code of Criminal Procedure.

4. The right to legal counsel

51. Without prejudice to the application of the new legal norms governing legal assistance and public defenders, upon the entry into force of those norms, the competent authorities should effectively advise any person, whether or not detained, against whom an investigation by the auxiliary organs of justice is being initiated of his right to appoint legal counsel. The accused should be advised of this right from the moment he is charged. Any person arrested or detained, on a criminal or other charge, shall be guaranteed access to counsel immediately and in all cases within 48 hours of his arrest or detention, in accordance with the basic principles on the role of lawyers (Principle 7). n/ A special effort should also be made to train public defenders.

5. Pre-trial detention

52. A person may be subject to pre-trial detention only where such detention is necessary to ensure his presence at the trial or to prevent any obstacles being placed in the way of the investigation. Courts should use the maximum term of 72 hours for their investigations (art. 244 of the Code of Criminal Procedure) only where the gravity of the offence and the difficulties of the investigation render this strictly necessary. The rules governing the length of pre-trial detention set forth in paragraph 37 of this report should be respected and a legal provision should be adopted establishing procedures for automatic release based on the above-mentioned rules, when the emergency law to resolve the problem of untried detainees ceases to have force.

6. Delay in the administration of justice

53. A special effort should be made to observe the time limits prescribed by law for concluding the pre-trial proceedings in criminal cases and to ensure that those proceedings in no case exceed what may be considered a reasonable period. Also, the delays provided for the trial itself from its commencement to the rendering of the judgement and notification of a final sentence should

be respected. In order to promote respect for the right to be tried without undue delay, the Mission recommends that the organization of the administration of justice and of the Office of the Chief State Counsel should be strengthened by implementing the judicial system reforms that have been incorporated into the Constitution of the Republic as a result of the signing of the Peace Agreement.

C. National Counsel for the Defence of Human Rights

54. The financial and capital resources provided for in the law establishing the National Counsel for the Defence of Human Rights must be made available, particularly the contributions and grants made by the Central Government, and steps must be taken to ensure the transfer of the funds necessary for the start-up operations of this new institution.

D. Identity documents

55. The central authorities and local bodies must assist mayors in applying the new laws in this field, as well as all the other procedures for the documentation of personal identity. Such assistance should include clear and consistent instructions to municipalities on the application of the new norms in conformity with the principles of equality before the law and non-discrimination. The process of documentation must be completed in the shortest possible period to facilitate the full reintegration of the persons concerned into national life.

E. Respect for international humanitarian law

56. The Mission recommends that the parties, during the entire period of cessation of armed conflict, should strictly observe the norms of article 3 which are common to the four Geneva Conventions of 12 August 1949 and to Additional Protocol II o/ to those Conventions, particularly with regard to the fundamental guarantees concerning the treatment of human beings and the protection of civilian populations.

F. Follow-up to recommendations

57. On 7 January 1992, the Mission sent notes to both the Government of El Salvador and FMLN seeking to ascertain the manner in which the recommendations contained in its second report (paras. 146 and ff.) were being followed. The notes included a reminder of the thrust of those recommendations. FMLN, on 27 April 1992, sent a letter in reply to the note of the Mission. The Government of El Salvador has not yet responded to the Mission's request.

Notes

a/ The number of complaints received by the Mission from January to March 1992 declined by 19.7 per cent as compared with October-December 1991. The decline was even more drastic with regard to complaints of violations of international humanitarian law - as much as 79.1 per cent. Complaints of irregular recruitments dropped by 58.7 per cent.

b/ Commission for the Revision of Salvadorian Legislation, "Immediate Reforms to the Code of Criminal Procedure", first part, vol. II, July 1987, p. 389; see also p. 402.

c/ The Technical Support for Judicial Reform unit (ATJ) worked out several drafts of partial reforms in penal and criminal procedures pending preparation of new drafts of the Penal Code, the Code of Penal Procedure and Execution of Penalties. As of 31 March, the President had tabled bills dealing with legal assistance and public defence - that have now been passed by the Legislative Assembly - and with decriminalization of theft and fraud among close relatives and the elimination of presumptions of guilt. Bills dealing with the repeal of the practice of extrajudicial confession, of the period of administrative detention and indivisibility of confession.

d/ International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex, and American Convention on Human Rights.

e/ This provision was included among the commitments for immediate action on human rights of the San José Agreement and in annex A of the operations manual on priority to be given to investigations, arrests and rights of detained persons prepared by the Joint General Staff of the Armed Forces on 31 July 1990.

f/ In the period July 1990-June 1991, there were 207 public hearings held, 162 convictions and 263 acquittals.

g/ In January 1992, 125 final sentences had been pronounced in criminal cases, 60 convictions and 65 acquittals. In February 1992, 113 final sentences were pronounced, 63 convictions and 50 acquittals.

h/ The International Covenant on Civil and Political Rights recognizes those rights (art. 9 (3) and 14 (3) (c)). Apart from the provision that "... It shall not be the general rule that persons awaiting trial shall be detained in custody ..." - that only appears in the Covenant - those rights are also established by the American Convention on Human Rights (art. 7 (5) and 8 (1)).

i/ The exceptional nature of pre-trial detention is also established by an important international instrument which was recently adopted by the General Assembly in its resolution 43/173 of 9 December 1988, namely the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, principles 36 (2), 37, 38 and 39.

Notes (continued)

j/ See "Penal systems and human rights in Latin America", Final Document of the research programme conducted by the Inter-American Institute of Human Rights (1982-1986). Coordinator: Professor Eugenio R. Zaffaroni; Publisher: Depalma, Buenos Aires, 1986, p. 149 and ff.

k/ Issued in Decree No. 577 by the Revolutionary Government Junta on 26 January 1981.

l/ See Additional Protocol II to the Geneva Conventions of 12 August 1949, art. 6 (5) (United Nations Treaty Series, vol. 1125, No. 17513).

m/ Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990 (A/CONF.144/28).

n/ Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (op. cit.).

o/ United Nations Treaty Series, vol. 75, Nos. 970-973 and ibid., vol. 1125, No. 17513.

Appendix I

Prisoners by penal institution as at 6 March 1992

Penal institution or detention centre	Total by penal institution	Convicted		Total convicted	Awaiting sentence		Total
		M	W		M	W	
GENERAL TOTAL	5 286	522	9	531	4 497	258	4 755
Central Prison	2 084	177	-	177	1 907	-	1 907
Western Reg. Prison a/	611	35	-	35	558	18	576
Eastern Reg. Prison	580	130	-	130	447	3	450
Atiquizaya Prison	96	2	-	2	90	4	94
Prison Hosp. for lung diseases	16	2	-	2	14	-	14
Prison Hosp. at Rosales	10	-	-	-	10	-	10
Prison Hosp. for psychiatric diseases	40	1	-	1	33	6	39
Women's Prison: Ilopango	289	-	9	9	-	280	280
La Union Prison	78	14	-	14	64	-	64
Quezaltepeque Prison	218	36	-	36	179	3	182
Gotera Prison	220	18	-	18	202	-	202
San Miguel Prison	369	41	-	41	320	8	328
Sensuntepeque Prison	193	26	-	26	167	-	167
Sonsonate Prison	327	18	-	18	304	5	309
Usulutan Prison	162	22	-	22	132	8	140
Tonacatepeque Prison	73	-	-	-	70	3	73
Total %	100%	9.88	0.17	10.05	85.07	4.88	89.95

a/ Includes Santa Ana Women's Prison.

Appendix II

Table 1. Complaints received by ONUSAL a/

	January	February	March	Total
Summary executions				
Attributed to members or former members of the armed forces b/	7	4	4	15
Attributed to others	4	7	9	20
Attributed to persons unknown	12	11	16	39
Death threats				
Attributed to members of the armed forces	13	11	6	30
Attributed to others	6	8	16	30
Attributed to persons unknown	5	9	6	20
Enforced or involuntary disappearances				
Attributed to members of the armed forces	3	2	3	8
Attributed to persons unknown	3	-	1	4
Abductions attributed to FMLN	7	4	6	17
Attributed to others	5	4	-	9
Attributed to persons unknown	3	-	1	4
Torture	1	2	-	3
Cruel, inhuman or degrading treatment or punishment	23	20	19	62
Other violations of those rights				
Attributed to members of the armed forces	11	14	18	43
Attributed to others	6	7	11	24
Attributed to persons unknown	26	23	25	74
Violations of due process of law	49	76	66	191
Violations of personal liberty				
Illegal or arbitrary detention	66	43	57	166
Restrictions on freedom of movement	7	1	4	12
Irregular recruitment	100	26	5	131
Violations of freedom of association	6	1	7	14

/...

Table 1 (continued)

	January	February	March	Total
Violations of freedom of expression	-	-	6	6
Humanitarian law				
Humane treatment				
Violations attributed to the armed forces	3	-	-	3
Violations attributed to FMLN	4	3	4	11
Civilian population				
Violations attributed to the armed forces	1	-	-	1
Violations attributed to FMLN	22	12	13	47
Unattributable	3	-	-	3
Inadmissible complaints	97	118	148	363
Total	493	406	451	1 350

Note: The figures for the month of April 1992 will appear in the next report of ONUSAL to the United Nations Secretary-General.

a/ The total or partial figures included refer to complaints received and should not be construed as an affirmation by ONUSAL that the violations actually took place.

b/ "Armed forces" includes the following defence institutions: army, air force and navy, security bodies, civil defence and territorial services.

Table 2. Statistics from the Human Rights Office of the Armed Forces General Staff a/

Violations of human rights by FMLN

Category	January	February	March	Total
Murders of civilians	1	-	1	2
Persons injured or maimed	2	5	-	7
Attacks on the civilian population	3	11	3	17
Abductions of civilians	38	112	6	156
Acts of violence or threats against civilians	3	13	19	35
Forcible recruitment of children under 15	-	-	-	-
Persons killed by mines	1	5	2	8
Persons killed during attacks	-	-	-	-
Persons maimed or injured by mines	2	13	7	22
Rapes	-	-	2	2
Attacks on property	-	5	4	9
Unlawful seizures of land	5	25	12	42
War taxes	-	-	-	-
Total	55	189	56	300

Source: "Statistical information on human rights violations for the months of October, November and December 1991", Human Rights Office of the Armed Forces General Staff.

a/ The governmental Human Rights Commission has not furnished statistics for this period.

Table 3. Statistics from the Legal Protection Office of the Archdiocese of San Salvador a/

Category	January	February	March	Total
Persons arrested	2	1	1	4
Persons arrested and disappeared	-	3	7	10
Persons disappeared	8	2	2	12
Persons arrested and later released	2	-	4	6
Persons abducted by FMLN	-	1	-	1
Prisoners of war held by FMLN	-	-	-	-
Forcible recruitment by FMLN	-	-	-	-
Deaths attributed to death squads	5	6	6	17
Deaths attributed to the armed forces	8	6	1	15
Deaths caused by explosive devices, responsibility unknown	7	6	-	13
Deaths caused by explosive devices, attributed to the armed forces	-	-	-	-
Deaths caused by explosive devices, attributed to FMLN	-	-	-	-
Deaths occurring during cross-fire, responsibility unknown	-	-	-	-
Deaths occurring during cross-fire, attributed to the armed forces	-	-	-	-
Deaths occurring during cross-fire, attributed to FMLN	-	-	-	-
Deaths occurring during army operations (civilians and combatants)	-	-	-	-
Deaths occurring during clashes, ambushes or army patrols (civilians and combatants)	8	-	-	8
Murders attributed to FMLN	1	-	1	2
Army and security force casualties	3	-	-	3
Total	44	25	22	91

Source: Legal Protection Office of the Archdiocese of San Salvador.

a/ The Human Rights Commission of El Salvador (non-governmental) has not furnished statistics for this period.

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LETTER DATED 4 JUNE 1992 FROM THE PERMANENT REPRESENTATIVE OF BAHRAIN TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

In my capacity as Chairman of the Arab Group for the month of June, I have the honour to inform you that the Arab Group today held a discussion on the grave developments in the occupied Palestinian territory, including Jerusalem, in particular the critical situation in the Gaza Strip and the negative impact that the continuation of these repressive acts will have on the current peace process.

The members of the Arab Group asked me to convey to you their extreme concern about and their condemnation of the continuing Israeli practices against the Palestinian people in the occupied Palestinian territory.

The Arab Group wishes to draw the attention of the Security Council to the Israeli occupation authorities' escalation of their repressive acts against the Palestinian people, particularly in recent days, in violation of the obligations incumbent on them under the fourth Geneva Convention of 1949.

In this regard, the Arab Group affirms the responsibility of the Security Council, in particular with regard to the implementation of its pertinent resolutions, especially Security Council resolution 681 (1990).

The Arab Group hopes that the Security Council and the Secretary-General of the United Nations will take immediate action, in accordance with resolution 681 (1990) and other pertinent resolutions of the United Nations, to extend international protection to the Palestinian people under the yoke of Israeli occupation.

The Arab Group will follow the Security Council's efforts to exercise its responsibility and to put an end to Israeli violations.

I request you to have this letter circulated as an official document of the Security Council.

(Signed) Muhammad ABDUL GHAFFAR
Permanent Representative
of the State of Bahrain
Chairman of the Arab Group